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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

-----X
UNITED STATES OF AMERICA

against-

**PHILLIP A. KENNER and
TOMMY C. CONSTANTINE,**

Defendants.
-----X

Docket No. 13-cr-607 (JFB)

Defendant, Kenner –

Forfeiture supplement

Table Of Contents

Table of Authorities	<u>Page</u> 4
Background	5
Forfeiture supplement with forensic	8
The Hawai'i Project	8
○ <i>Clear Kenner transparency documented by three (3) SDNY Grand Jury testimonies in 2011</i>	11
• <i>Michael Peca March 2011 SDNY Grand Jury testimony</i>	11
• <i>Turner Stevenson March 2011 SDNY Grand Jury testimony</i>	11
• <i>Darryl Sydor March 2011 SDNY Grand Jury testimony</i>	12
○ <i>Michael Peca's SDNY Grand Jury testimony further exonerated any Kenner concealment issues</i>	14
○ <i>Owen Nolan gave provably false testimony regarding his LOC knowledge</i>	16
○ <i>Northern Trust Banker Aaron Mascarella's 3-9-09 deposition (prior to the Nolan 2009 arbitration perjury of "no knowledge")</i>	17
○ <i>Owen Nolan Annual <u>one-page</u> Disbursement Request & Authorization documents (signed by Nolan)</i>	19
○ <i>December 2007 – It is wholly impossible for Nolan to be unaware of his Northern Trust Bank LOC &/or the paperwork he has signed for 4+ years to date</i>	20
○ Chronic Traumatic Encephalopathy ("CTE")	23
○ <i>The witnesses' memories were consistent with CTE and its symptoms</i>	23
○ <i>The primary symptoms of CTE have been described by the neurological experts in those cases</i>	25
○ <i>The Hawai'i investors are not actually victims in the instant case -- because they have a net-profit in the Hawai'i Project</i>	27
○ <i>As of the end of 2018, the following are <u>minimum values</u> for the Hawai'i LOC investors ROI (remaining unrealized gains)</i>	28
○ <i>Hawai'i LOC investors <u>NOT</u> alleged as victims in the 2015 Superseding Indictment</i>	31
○ Baja Ventures 2006, LLC	32
○ <i>Hawai'i Line of Credit capital account contributions (for Little Isle 4)</i>	33
○ <i>Jowdy's January 2010 testimony was furthered authenticated by his own February and March 2010 FBI proffers</i>	36
○ <i>The Jowdy loans have been at all times titled thru the 2004 loan agreement in the name of Little Isle 4 as a lender</i>	37
○ <i>The government officially verified the Jowdy loan</i>	37
○ Constantine Hawai'i consulting payments	38

Eufora Private stock sales	43
o <i>The 2010 Eufora audit by Stolper and Giuliani's investigative group clears Kenner of any investor loss as a result of Kenner's actions</i>	44
o <i>Jay McKee confirms Giuliani contingency fee for investigations</i>	44
o <i>Tim Gaarn has been the AZ Eufora Partners I Managing Member since 2005</i>	46
o <i>Gaarn surreptitiously records Kenner for the FBI in 2012 for four (4) hours and bears no fruit of conspiratorial actions; nor does Gaarn imply it to trap Kenner</i>	47
o <i>During the lengthy recordings of Kenner -- Gaarn was solely concerned about the taxes he owed the IRS for selling "his stock"; simply asking Kenner for advice</i>	47
o <i>Gaarn FBI proffer notes were altered</i>	49
o <i>Since 2011, the end of Stolper and Giuliani's team's work, the only traceable activity that has affected the underlying value of Eufora has been the FBI investigation and communication by Galioto to the Eufora banking partners and other related parties</i>	50
o <i>Neither Giuliani nor Stolper represented Kenner</i>	51
o <i>Kenner's laptop and peripherals remain unrecovered</i>	53
o <i>Nash's private stock purchase was independently confirmed by Nash</i>	53
o <i>Norstrom's private stock purchase was independently confirmed by Norstrom</i>	54
o <i>Ranford's private stock purchase was independently confirmed by Ranford</i>	55
o <i>The Stolper and Giuliani <u>signed</u> disclosures included the following investors who were named as alleged Eufora Private Stock purchase victims in the 2015 Superseding Indictment</i>	57
Global Settlement Fund ("GSF")	59
o <i>GSF Acknowledgement and Approvals were received from the following contributors before their funds were used as authorized by Constantine</i>	60
o <i>Jay McKee lies about GSF knowledge in 2015</i>	60
o <i><u>Nothing was concealed from McKee</u> – but full exhibition of his CTE symptoms were present during his complete 2015 amnesia-laden testimony about not being told any GSF details by Kenner &/or Constantine</i>	61
o <i>Nothing was concealed from Michael Peca – but full exhibition of his CTE symptoms were present during his complete 2015 amnesia-laden testimony about not being told any GSF details</i>	62
o <i>Constantine maintained full control of the GSF independently – and at all times</i>	65
o <i>Gonchar and Constantine "side-deal" destroys all government claims of Constantine misappropriation with over \$1,500,000 granted to Constantine from Gonchar (unrelated to the GSF) – <u>in addition to de-linking their attempted venue claims</u></i>	67
Conclusion	70

Table of Authorities

CASES

	<u>Page</u>
<i>United States v. Berger</i>	32
<i>United States v. Boccagna</i>	52
<i>United States v. Cromartie</i>	24
<i>United States v. Dunnigan</i>	23
<i>United States v. Ganji</i>	34

Background

Multiple “schemes” were alleged in *United States v. Kenner*; the Hawai’i Project, the Eufora private stock sales, the Global Settlement Fund, and LedBetter loan. Listed as Kenner victims in the Superseding Indictment filed 4-22-2015 (*Docket 214*), the following individuals were involved in the following respective “schemes”:

The Hawai’i Project:

1. Bryan Berard (no other involvement)¹
2. Tyson Nash
3. Owen Nolan
4. Mike Peca
5. Steve Rucchin
6. Darryl Sydor
7. Joe Juneau (non-victim bought out by Nolan -- and no other involvement)

The Eufora Private Stock sales:

1. Tyson Nash
2. William Ranford
3. Owen Nolan
4. Mike Peca
5. Steve Rucchin

¹ Berard gave **specific and voluntary testimony** in May 2009 (*only weeks after his documented and voluntary release of collateral to Northern Trust Bank*). In 2009 testimony – Berard confirmed that he was **fully aware and approved of the Hawai’i loans to Ken Jowdy**. Berard gave no contradictory testimony in 2009 upon specific questions of knowledge and approval. Berard cannot be considered a victim of any *concealment based on his prior, “under oath” testimony*. Berard's recollection – *if not caused by Chronic Traumatic Encephalopathy (“CTE”) – has been solely influenced by his 2012 employment in Mexico under Ken Jowdy and Tom Harvey (and two [2] lawsuits he was a defendant to Kenner at the time of Kenner arrest – based on Berard and John Kaiser's assistance).*

- See NY Daily News Article: “*Former NHL player Bryan Berard and ex-cop [John Kaiser] help feds nail two Arizona men in massive fraud*”, November 13, 2013, 1:33pm

Upon information and belief -- Berard has filed at least one (1) lawsuit versus the NHL for CTE symptoms as a result of his multiple, documented concussions during his hockey-playing career.

- **CTE Symptoms are specifically listed as faulty memory, confusion and dementia – amongst other degenerative mental issues.**

6. Darryl Sydor

The Global Settlement Fund ("GSF"):

1. Jay McKee (no other involvement)
2. Steve Rucchin
3. Darryl Sydor
4. William Ranford
5. Tyson Nash

LedBetter (Sag Harbor):

Addressed, *infra*, as a \$395,000 short-term loan John Kaiser negotiated from Na'alehu Ventures 2006 -- as a specific condition for Kaiser's Hawai'i 2006 Joint Venture **sign-off** (*mandated by Lehman Brothers to fund the \$105 million project*).

Facts (all in the government's Rule 16 evidence production):

- The Kenner Indictment argued that Berard and Kaiser claimed Berard was supposed to receive a fifty percent (50%) interest in the LedBetter project for his original deposit in 2006. Yet -- Kaiser and Berard only produced their forged and fabricated LedBetter operating agreement five (5) years later. *See KForfSupp-1*
- To complete their fraud -- Kaiser and Berard Kaiser gave Kaiser a fifty percent (50%) interest with only \$30,000 in the deal (same as Kenner from after Kenner's 2010 tax payment).
- Yet -- Berard and the government have NO issue insinuating their theory in contradiction to the actual "***forged and fabricated***" documents Berard and Kaiser manufactured to steal the LedBetter project from Kenner and Tesoriero.
 - **It is wholly indefensible by the government, Berard and Kaiser** -- *but in no way is it relevant to any Kenner fraud (specifically not for any benefit), as Kenner was robbed by Berard and Kaiser.*
- Kaiser repaid his short-term LedBetter loan 11-days later to Na'alehu Ventures 2006 after Kenner initiated a lien on the property for the Kaiser loan. (*PKHome-10927 and KForfSupp-2*). Kaiser confirmed his personal repayment on his own hand-written notes -- *in agreement with the short-term loan provisions to receive his 2006 Lehman Brothers deal signoff for the Hawai'i Project. (See KForfSupp-3)*
- Kaiser verified in an Arizona civil case 2013-052349 (*See KForfSupp-4*) (*Kenner v. Kaiser and Berard* for forgery and theft of real property) -- with Kaiser's Response that the \$395,000 loan in 2006 was his money -- and at

no time belonged to Kenner. (*See Kaiser-Berard Response to Kenner 2013 Arizona Complaint*).

- Kaiser and Berard stole the Sag Harbor property from Kenner's LLC with forged and fabricated documents (*See KForfSupp-5*) -- and sold the property without Kenner's knowledge (as the Managing Member of LedBetter).
- Kaiser refused Certified Mail delivery to notify him for the third (3rd) time of the frauds he perpetrated on Kenner -- before Kenner was forced to sue he and Berard after months of non-response. (*See KForfSupp-6*)
- Berard and Kaiser SOLD the property and split the \$700,000 sale proceeds, **thus neither could be considered a victim from their own criminal activity**, notwithstanding their specific frauds on the Arizona court. (*See KForfSupp-7*)
- Kaiser's close friend, former NYFD 9-11 first responder, Vincent Tesoriero, confirmed to the FBI after Kenner's arrest and detainment that Kenner was only expected to acquire future construction funding (*See paragraph 8*); all of which he learned from Kaiser (with no relationship at all with Kenner prior to the 2006 deal construction – *See paragraph 8&9*). *See KForfSupp-8*.
- Lastly -- Kaiser, as the Managing Member of Na'alehu Ventures 2006, documented Michael Peca's additional capital contribution that covered Kaiser's own short-term loan in the Na'alehu Ventures 2006 tax records; at all times.
 - As Managing Member for over ten (10) years, Kaiser has never addressed any inappropriate Hawai'i transactions – specifically not the funds included in **his short-term loan negotiations** in 2006.

[The remainder of this page left intentionally blank]

Forfeiture supplement with forensic²

The Hawai'i Project --

With respect to the investments in the Little Isle 4 and Na'alehu Ventures 2006 Hawai'i project, **THERE WAS NO LOSS**. The residual assets of Little Isle 4 are all positive. The Hawai'i frauds were alleged to be based upon:

- 1) The supposed "unknown" nature of the documented corporate loans to Ken Jowdy (*a mutual business partner of all of the Hawai'i loan participants*) – and
- 2) The payments to Constantine to secure funding for the Hawai'i project's acquisition and development plans – based on an alleged "forged" document.³

² All relevant banking records verify the totals referenced in this submission via documents that were delivered by Kenner to the Court-assigned forensic accountant in or about September 2018.

³ The 2015 forgery was alleged by John Kaiser, *a non-victim in the case* – but as a full-time employee of Ken Jowdy in Mexico since 2012 – who has been proven thru government obtained documents to have stolen, embezzled and diverted tens of millions of dollars from Kenner and Kenner investors. **Jowdy's non-prosecution is still a massively unanswered matter in the ongoing FBI misrepresentations to Kenner investors in the instant case.**

Kaiser has proven to be a liar – specifically about claiming his name as forged multiple times – including in the EDNY (this instant case).

Kaiser has been proven to be a perjurer (a.k.a. liar) with respect to a myriad of facets of his 2015 testimony – but in this particular element (forgeries) – Kaiser has been specifically revealed as a "liar" in multiple other jurisdictions contemporaneous with the FBI investigations and 2015 EDNY trial.

Kaiser lies to EDNY US Attorneys and the FBI regarding his Mexico-signed testimony versus Jowdy (in another unpaid Jowdy loan case) – only reversing his statements and calling them forged by Kaiser after he received his job from Jowdy in Mexico.

- **2014 Pre-EDNY-trial** – the US attorneys claimed that Kaiser's name was forged on a significant Mexico Court document. After the false 2014 representation in the EDNY Courtroom in front of Judge Bianco – Kenner exposed another false "forgery" lie by Kaiser by identifying specific FBI recordings of Bryan Berard who **admitted** that **Berard and Kaiser actually signed the said documents in Mexico** on a trip to Mexico for that specific reason versus Jowdy. Berard admitted they signed the documents in front of their own independent Mexico attorney at the Federal Court

House. This constituted a clear and obvious fraud about forgeries to the EDNY Court by Kaiser, the FBI &/or the US Attorneys involved.

- *Please note that immediately after Kaiser was hired in Mexico – he gave testimony in the Mexico courts to claim his signature as a “forgery” in order to assist Jowdy in dismissing a multi-million dollar “loan” case against him by Jozef Stumpel.*
- The government produced the surreptitious 2012 records to Kenner in pre-trial – thus they were in full knowledge of Kaiser's false “forgery” claims *at all times* – when they represented this issue the Court during pre-trial conferences.

Kaiser and Berard caught lying about more forgeries in a 2015 Arizona case originally sued by Kenner.

- In a 2015 contemporaneous Arizona civil trial (*See KForfSupp-4*) – Kaiser and government confidential informant, Bryan Berard, claimed to have had their names “forged” on Promissory Notes and notarized documents, **which they were proven at trial to be liars** – by their own corroborating emails and texts.
 - The documents were corroborated as **authentic** by their own later admissions, email traffic between the parties attaching the alleged forgeries in real time and texts (*See KForfSupp-9 -- KForfSupp-10*), and the subsequent Arizona judge's adverse ruling against them (disbelieving all forgery defense claims).
 - *See KForfSupp-11@ pp9, 20[Sydor Promissory Note], 24, 25[Ranford Promissory Note], 34[Berard lies about fake contributions], 49, 57[fraudulent title transfer by Kaiser and Berard].*
- Yet in the 2105 EDNY trial -- Kaiser chose – without solicitation – to call a different Hawai'i loan agreement (*See KForfSupp-12*) – a “forgery” (*Tr.1106-08*).

Shockingly -- Kaiser's own boss, Ken Jowdy, authenticated the same agreement during his own losing December 2010 Nevada trial defense (to another unpaid \$791,000 personal loan to Glen Murray). (*See KForfSupp-13*)

Kenner has always maintained the 2004 Hawai'i loan agreement as authentic – as corroborated by the document “**signature witness**” (Robert Gaudet) in three (3) separate legal proceedings “*under oath*”. Thus – the foundationless statement by Kaiser was without merit and pre-planned – claiming Kenner “somehow” told him the loan agreement was fake – in contradiction to 100% of:

1. Kenner's pre-trial actions,
2. The signature witnesses' statements,
3. Jowdy own 2010 Nevada authentication admissions, and
4. All other empirical evidence.

- It should be noted that the FBI interviewed Gaudet almost a dozen times pre-trial – and met with him face-to-face in Cabo san Lucas Mexico April 22-23, 2014 (after the Kenner arrest and detainment).
- The FBI proffer notes mysteriously are **void** of the one, single critical Q&A that Gaudet could have cleared up; his own witness signature on the document that alternatively the government called “*phony*” (Tr.4597, 4598), “*bogus*” (Tr.5708 (2x), 5709), and “*supposed*” (Tr.5707-5708) throughout the trial to destroy Kenner credibility
 - **Instead -- THEY AVOIDED the obvious investigative issue LIKE A PLAGUE (knowing the truth would destroy their case theory).**

Berard and “EDNY tracing witness” (Lanie Donlan) were caught lying about another alleged forgery in the 2015 Arizona case – with Berard’s own texts messages “sinking” his perjured claims (Jowdy-style).

- Bryan Berard – Kaiser and Jowdy’s right-hand-man and resident thug (*See Kenner (Rule 6e)–Motion for release of Grand Jury Minutes @79-80 [footnote 48], and infra*) – was simultaneously caught in the 2015 Arizona case lying about another document he claimed he neither *signed* nor had *notarized* in Massachusetts – with government “*tracing*” witness (Lanie Donlan) also signing the document as a witness (*See KForfSupp-14*). Berard and Donlan’s false claims to the FBI and Arizona court fail with the corroborating text messages between Berard and Kenner on the exact dates Berard signed, notarized, and sent the documents back to Kenner via Kenner’s FedEx account (***all in Rule 16 evidence***).
- This confirmed another Berard-Kaiser lie (with Donlan’s help this time) specifically regarding “forgeries” to a federal court and the FBI. (*See Kenner Rule 33 Prosecutorial Misconduct @ 43-45*)

Berard threatening texts to Rem Murray (and Greg deVries) while they were giving criminal testimony versus Jowdy in Mexico (with Bob Gaudet – the signature witness to the 2004 Hawai’i loan agreement with Jowdy):

150 49	+158621 23454 Rem Murray*	1/31/2013 5:48:16 PM(UTC+ 0)	R e a d	FWD: <u>U 2 DUMB Bastards</u> . At court house with Bob Gaudet <u>signing criminal papers against Jowdy??</u> You 2 will never get on property now and <u>will be getting sued in</u>
150 50	+158621 23454 Rem Murray*	1/31/2013 5:48:46 PM(UTC+ 0)	R e a d	FWD: <u>the USA..</u> You have NO clue what your signing. yourjust as BAD as Kenner and Gaudet now. IDIOTS

Clear Kenner transparency documented by three (3) SDNY Grand Jury testimonies in 2011.

Michael Peca, Turner Stevenson and Darryl Sydor summed up the loan to Jowdy issues the best during their 2011 “under oath” SDNY Grand Jury testimony Q&A –

Michael Peca March 2011 SDNY Grand Jury testimony⁴:

Q: How much did you put into Little Isle 4?

A [Mike Peca]: “\$100,000 cash investment that was going towards that. Then we had lines of credit. I had one out for \$1.7 million that was going to be used at the time. Here’s where a lot of the cross starts to happen. A short-term loan to Mr. Jowdy, because at the time Cabo – we hadn’t gotten the lending from Lehman Brothers yet. We made a short-term loan until the lending came in. Once the lending came through they were to pay back the loan, I think in the neighborhood of five-and-a-half million dollars, on the closing. It was never paid back. And then communication basically seized [sic] at that point from him [Jowdy]. That was kind of the whole sticking point as far as me and the other guys with Mr. Jowdy.

The 1.7 [million dollars] along with the \$100,000 and whatever else put in this a capital account, Little Isle 4, I believe. The Capital account was loaned to Ken Jowdy, our business partner, so there is no need at the time to be worried about anything. The money was loaned to Ken Jowdy to basically help some of the purchase of the Cabo property so we can get the funding. And then it was supposed to [be] a short-term loan.

Turner Stevenson⁵ March 2011 SDNY Grand Jury testimony:

Q: When you put up \$100,000 for Hawai’i, did you have any understanding of whether the money could be used to pay for the Mexico project or was it just supposed to go to the Hawai’i project?

⁴ In 2015 -- Peca confirmed that he gave truthful answers to the SDNY Grand Jury re – the Jowdy loans from Hawai’i and his full expectation that his \$1.7 million capital contribution from his line of credit advance were going to Jowdy – even though only \$240,000 originated from the Peca LOC. Tr.497-8.

Q: ...when you testified in front of the Grand Jury in the Southern District of New York, the answer you gave to that question was truthful, was it not?

A [Michael Peca]: Yes, it was.

⁵ Not a named victim in the 2015 Superseding Indictment.

A [Stevenson]: In the beginning it was supposed to go to Hawai'i. Then I saw they needed, the group of us got together, we have this piece of land that's available for purchase in Mexico that we need to wait on or get funds on to transfer as a group like one big blanket to get money into Cabo and pay for that land to hold it until the loan came.

Q: So are you saying that you agreed to transfer some of the money from the Hawai'i project to the Cabo project?

A [Stevenson]: I would say that, yes.

Q: Who made that decision?

A [Stevenson]: I think all of us as a group.

Q: What do you mean as a "group", who is the group?

A [Stevenson]: All the guys who were invested in it.

Darryl Sydor March 2011 SDNY Grand Jury testimony:

Q: Was that [the Line of Credit at Northern Trust Bank] also for Little Isle 4 as far as you know?

A [Sydor]: Yes, but then we put it towards a short-term loan to Mr. Jowdy until Lehman Brothers came up with the money that was supposed to be paid back."

Q: Did you know in advance that it was going to be used, this Little Isle 4 money, to be used to salvage the Cabo investment?

A [Sydor]: Yes. It was to help with the short-term loan to keep funding the Cabo, but then its supposed to be paid back, but that's -

Q: Paid back to you or to Little Isle 4?

A [Sydor]: Paid back to Little Isle 4.

Q: So -

A [Sydor]: Back to Hawai'i, not me personally.

Q: Bu that didn't happen?

A [Sydor]: That didn't happen. And Lehman came up with the \$129 million loan. It was supposed to be back at closing.

At no point during their respective testimony did Peca, Stevenson or Sydor tell the 2011 SDNY Grand Jury that they learned about the loans to Jowdy "after the fact" or that it was in any way "unknown" or "concealed". They independently confirmed that the loans to Jowdy were specifically discussed and approved "by the group" of investors in real time, **exonerating Kenner of any perceived concealment.**

These "known" loans to Jowdy were clearly decided "as a group" of investors for the benefit of the Hawai'i project (15% interest per the terms of the Revolving Line of Credit issued by Little Isle 4 to Jowdy and documented⁶) and -- "to help with the short-term loan to keep funding the Cabo, but then its supposed to be paid back." (as testified to by Darryl Sydor in March 2011, *supra* -- years after his Line of Credit ["LOC"] collateral seizure). Sydor specified to the 2011 Grand Jury that he knew the Jowdy loans would be paid back to "Little Isle 4 -- and not himself personally", *supra*.

In fact, not a single Hawai'i LOC investor claimed in any pre-trial statement made to the FBI or US Attorneys' Office that they were unaware of the seizure of their collateral.⁷ *Nor was a single adverse claim was turned over to the defense pre-trial.*

⁶ See *KForfSupp-12* -- Jowdy and his Nevada attorneys authenticated this exact loan agreement during his defense case in *Glen Murray v. Jowdy* (District Court, Clark County, Nevada -- Case No. A571984). In which -- Jowdy was found 100% liable for another unpaid loan totaling \$791,000 plus interest at that time (See *KForfSupp-13*).

⁷ The **collective** lack of knowledge could not have been possible in 2009 -- as Northern Trust Bank **required that every Hawai'i LOC client speak directly with Northern Trust Bankers Mascarella and Brill** prior to the release of collateral funds. Peca confirmed the call to Kenner (as did Sydor, *infra*) -- after Kenner's text to alert him of the need for the call -- leaving **no possible concealment** -- as they both falsely claimed at trial in 2015:

From Kenner to Peca:

7415	+1716374323 4 Michael Peca*	4/1/2009 10:38:15 PM(UTC+0)	Sent	A NOthern trust person will Call you to confirm your transfer to Schwab. Please acknowledge.
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Michael Peca's SDNY Grand Jury testimony further exonerated any Kenner concealment issues.

With Michael Peca "*safely*" and "*privately*" in front of the 2011 SDNY Grand Jury – and under oath – he confirmed that he signed for his Northern Trust LOC and knew clearly that some funds from his Hawai'i LOC went to Jowdy for the loans. This contradicted his meandering claims of "*no knowledge*" in 2015 at trial (*Tr.430, 644*). In fact, during his 2011 SDNY Grand Jury testimony, Peca believed that "**all**" of his funds were sent to Jowdy, *infra*, not just a very small portion, which originated with his Hawai'i LOC investment in Little Isle 4 (*See Michael Peca SDNY Grand Jury testimony @33 and 35*):

Q: As far as you know your 1.7 million was to go to Little Isle 4 at some point so they could use it?

A [Peca]: It was part of the land acquisition, yes.⁸

Q: Obviously the 1.7 couldn't go there because it got tied up in Mexico project.

Peca reply:

632 5	+171637 43234 Michael Peca*	4/1/2009 10:44:43 PM(UTC+0)	Read	Got it. Call already done. Was this the plan b/c it makes sense to pay the line off or b/c the the loan defaulted? Honestly
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From Sydor to Kenner:

6316	+19725230505 Darryl Sydor*	4/1/2009 8:48:29 PM(UTC+0)	Read	Hey someone from northern trust called with someone from schwabb. And want to do a conference call in a hour with erin someone
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Reply from Kenner:

7409	+19725230505 Darryl Sydor*	4/1/2009 10:04:40 PM(UTC+0)	Sent	Call me after u speak to them
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⁸ Peca did not corroborate the "*vertical construction*" answer both he and his wife fabricated in 2015. *Tr. 381, 384, 419*, (697, 699[Kristen Peca])*

A [Peca]: Correct.

Q: I want to make sure I understand it right. Was the idea you took out this big loan, \$1.7 million, was the idea that after the Mexico project solved its short-term problem, the money comes back to you and pays off the loan. Or was it after the Mexico people solve their problem it goes to Hawai'i and funds your investment out there?

*A [Peca]: The recollection is that the two things were happening almost simultaneously. The loan by Lehman Brothers was held up, **and the short-term loan was to make sure that the loan was to come through. The loan to Mr. Jowdy was on a short-term basis.** We had a real asset in Cabo, it **pays different terms for us.**⁹ We were able to make sure the land was acquired and we did get the loan from Lehman Brothers.*

Not a single pre-trial statements from Hawai'i investors existed to form the basis for the government's trial theories of *concealment* – perhaps except for the revisionary statements (and undocumented) by two (2) new employees of Ken Jowdy in Mexico – in exchange for their newfound 2015 testimony; Galioto confidential informants, Kaiser and Berard.

In 2011, Michael Peca eloquently described to the SDNY Grand Jury his fundamental understanding of his Hawai'i LOC account and its associated risks, in addition to the actual events that took place regarding Jowdy's loans and the seizure of Peca's own collateral. Again – at no time – did Michael Peca tell the 2011 Grand Jury that he held Kenner responsible for unknown or concealed facts when repeatedly questioned about that specific topic. His SDNY Grand Jury testimony was the perfect place – *under oath* – to explain that he had no knowledge, felt confused, believed Kenner did something he was not authorized to do, or otherwise (if any of it occurred) – but instead – Michael Peca cleared up any equivocation to the 2011 Grand Jury, as follows (@39-40):

*Q: Did you understand **at the time** that if you did pay back the line ever [sic] credit the bank was going to take your bonds?*

⁹ Peca is clearly referring to the 15% interest the 2004 loan agreement Jowdy signed was **paying** Little Isle 4 for the short-term loan. Peca possessed a copy of the loan agreement for his records.

*A [Peca]: Yes, and they did. What they took was just under \$2 million, I believe it was 2008, maybe after a while. We were just, when the loan, **the short-term loan from Mr. Jowdy was not paid back**, the line of credit time matured. They had taken what was loaned, I guess, lent to **me** plus interest.*

*Q: Let me show you what is marked Grand Jury exhibit 106, which is the pledge agreement dated, November 5, 2007¹⁰. Kind of technical document, **do you remember signing documents putting up the bonds to secure the line of credit?**¹¹*

A [Peca]: Uh-huh, Yes. I was very well aware of that scenario

Q: Is this your signature?

A [Peca]: Yes.

Owen Nolan gave provably false testimony regarding his LOC knowledge (2009 and 2015).

It should be noted that **Owen Nolan** gave false testimony at trial that he claimed he was not aware that he had a Hawai'i LOC **at all** (Tr.2065-66).¹² The government ignored Northern Trust Banker Aaron Mascarella's own March 2009 deposition to Nolan's arbitration attorney – where Northern Trust Banker Mascarella **confirmed that he had spoken to Nolan independently on several occasions between**

¹⁰ This is the third (3rd) multi-page Pledge Agreement that Michael Peca signed with Northern Trust for his Hawai'i LOC, previously including 2005 and 2006 – all of which were delivered in the 2015 Northern Trust Bank subpoena.

¹¹ Michael Peca does NOT mention, “only signing one-page signature pages” to the Grand Jury during this critical testimony.

¹² Please note that Kenner never opened a Line of Credit (“LOC”) for any clients at Northern Trust Bank – despite the government's repeatedly misleading Q&A. Each Kenner client who personally established a Hawai'i LOC -- signed a voluminous number of bank transfer agreements, investment account set-up documents [IMUS], *Letters of Authorization, Annual Disbursement Request & Authorization, Master Note agreements, Pledge Agreements* – and received monthly Hawai'i LOC statements and annual 1099-Int Tax documents (both confirming annual use of funds) -- **as Northern Trust Banker Mascarella confirmed at trial** (and further confirmed by the actual documents in the 2015 Northern Trust Bank subpoena).

2003 and 2006 (when Nolan's Hawai'i LOC was open and funds were fully drawn for his Hawai'i equity contribution – in agreement with the five [5] years of Hawai'i LOC documents Nolan signed independently for Northern Trust Bank – produced thru the “delayed” Bank subpoena).

Northern Trust Banker Aaron Mascarella's 3-9-09 deposition (prior to the Nolan 2009 arbitration perjury of “no knowledge”) (@ 23-26):

Q: Okay. Now, with regard to the line of credit account, who was authorized to make transfers out of that line of credit?

A [Northern Trust Banker Mascarella]: Owen [Nolan] and Phil [Kenner].

Q: Was there any limitation on Mr. Kenner's ability to transfer money out of the account?

*A [Northern Trust Banker Mascarella]: No. It was -- Yes. I'm sorry. It was -- The proceeds were only to go to Little Isle Ventures, Little Isle IV, I think, if I remember correctly. He signed -- **Owen Nolan signed a bank authorization or an authorization letter to the bank authorizing Phil Kenner to transfer money from the line of credit into the Little Isle IV account.***

Northern Trust Banker Mascarella confirmed that he dealt with Owen Nolan between 2003 and 2006 related to the Hawai'i LOC payments being late and DEFAULT letters on the Hawai'i LOC...

Q: During the time period from -- From the time you opened the Nolan account until the end of 2006, did you have conversations with Mr. Nolan concerning the line of credit?

*A [Northern Trust Banker Mascarella]: Conversations -- **I spoke to Owen infrequently. I've only had brief conversations with him. And my guess is that it was only relating to the payments, that the payments were being made or not being made. There was a few times when the payments were slow, that we sent out default letters, which probably -- You know, I can't remember every conversation I had with him but I assume he might have responded to one of those default letters.***

Q: And on those accounts, was it Mr. Kenner who was authorized to sign on the lines of credit?

*A [Northern Trust Banker Mascarella]: **Yes. Each one of the players in the lending file had a letter, an authorization letter very similar to the one I***

spoke about earlier with Owen that said that Phil Kenner was authorized to transfer money out of the line of credit into the Little Isle account.

Nolan also falsely claimed – in contradiction to the Northern Trust Bank records – that he was not aware in 2007 that his funds had been drawn from his Hawai'i LOC (Tr.2069-2070). Notwithstanding Northern Trust Banker Mascarella's specific testimony about independent communication with Nolan and Nolan's Hawai'i LOC – Nolan signed dozens of documents for Mascarella and Northern Trust Bank, plus Nolan received multiple correspondences verifying the specific use of funds in his Hawai'i LOC, addressed at all times to Nolan's home address in California. Nolan signed the following **one-page disclosure documents**¹³ annually as follows:

¹³ **Each Northern Trust LOC client signed their annual *Disbursement Request & Authorization* documents and received 1099-Int Tax Documents from Northern Trust's tax department (directly).**

They each signed the following **one-page** annual acknowledgements for Northern Trust of "FUNDS DISBURSED" – leaving ***no concealment*** possible:

Annual Disbursement Request & Authorization Forms (all one-page including signature) signed annually and present in the 2015 EDNY "delayed" subpoena.

Peca (Disbursement Request & Authorization – in evidence):

See KForfSupp-15 – 2005 Disbursement Request & Authorization -- (signed – identifying a \$1,600,000 withdrawal within the first [1st] three [3] months)

Berard (Disbursement Request & Authorization – in evidence):

See KForfSupp-16 – 2003 Disbursement Request & Authorization -- (signed two [2] years before Lehman Brothers' involvement in Hawai'i refuting 2015 testimony – Tr.3035)

See KForfSupp-17 – 2005 Disbursement Request & Authorization

- *Verifying \$0 used*

See KForfSupp-18 – 2006 Disbursement Request & Authorization

- *Verifying \$895,350 used*

See KForfSupp-19 -- 2007 Disbursement Request & Authorization

- *Verifying \$617,911 used (reduction after Lehman Brothers disbursement)*

See KForfSupp-20 – 2008 Disbursement Request & Authorization

- *Verifying \$617,911 used*

Owen Nolan Annual one-page Disbursement Request & Authorization documents (signed by Nolan):

See KForfSupp-25 – 2004 Disbursement Request & Authorization

- *Verifying \$2,200,000 undisbursed*

See KForfSupp-26 – 2005 Disbursement Request & Authorization

- *Verifying 11,362 undisbursed and*
- *2,188,637 (amount paid to others on Borrower's behalf)*

See KForfSupp-27 – 2006 Disbursement Request & Authorization

- *Verifying 823,693 undisbursed and*
- *1,376,307 (amount paid to others on Borrower's behalf)*

See KForfSupp-28 – 2007 Disbursement Request & Authorization

- *Verifying 10,203 undisbursed and*
- *2,189,796 (amount paid to others on Borrower's behalf)*

Nolan received his **2006 tax K-1 from Little Isle 4** (and from Kenner) fully verifying the use of funds (as \$2,300,000) and the repayment amount (as \$761,458) after the 2006 Joint Venture and Lehman Brothers funding (in August 2006). *See KForfSupp-30.*

The mere fact that Nolan produced the Little Isle 4 tax document– with the **NOLAN0005044 BATE STAMP** – for the 2009 arbitration (*Nolan v. Kenner*) – fully confirmed that Nolan, his independent accountants, and his independent attorneys

Rucchin (Disbursement Request & Authorization – in evidence):

See KForfSupp-21 – 2004 Disbursement Request & Authorization

- *Verifying \$0 used (of initial \$480,000 LOC)*

See KForfSupp-22 – 2004 Disbursement Request & Authorization (second signed during year one [1])

- *Verifying \$0 used (of follow-up \$1,000,000 LOC)*

See KForfSupp-23 – 2005 Disbursement Request & Authorization

- *Verifying \$1,000,000 used*

See KForfSupp-24 – 2006 Disbursement Request & Authorization

- *Verifying \$686,599 used (reduction after Lehman Brothers disbursement)*

(who assisted in the Nolan litigation) had the fully documented use of funds in their possession – **fully discrediting any realistic or believable claims that anything related to his Hawai'i LOC and use of funds were *concealed* from Nolan.**

Notwithstanding all of the previous confirmations of Nolan's intimate knowledge of his LOC – prior to signing his LOC renewal package for Northern Trust Bank – **for the 5th annual time** – Nolan and Kenner carried on a 5-day text conversation and at least two (2) phone calls (confirmed in the texts) before Nolan used Kenner's FedEx account to independently send his signed LOC documents in December 2007 to Northern Trust Banker Mascarella. Nolan signed *KForfSupp-28* (2007 annual Disbursement Request & Authorization) as part and parcel to the package – which clearly denoted \$2,189,796.02 as **Amount paid on Borrower's behalf.**

December 2007 – It is wholly impossible for Nolan to be unaware of his Northern Trust Bank LOC &/or the paperwork he has signed for 4+ years to date...

From Kenner to Nolan –

37	+14169970110 Owen Nolan*	12/23/2007 3:40:50 PM(UTC+0)	Sent	<u><i>I need to send you via FEDEX LOC docs from Northern Trust that MUST be signed and returned by the end of the year.</i></u> Where are you the day after XMAS??
----	-----------------------------	------------------------------------	------	---

From Nolan to Kenner –

41	+14169970110 Owen Nolan*	12/23/2007 6:40:59 PM(UTC+0)	Read	What r the papers for
42	+14169970110 Owen Nolan*	12/23/2007 6:41:26 PM(UTC+0)	Read	And why the sudden rush

From Kenner to Nolan –

38	+14169970110 Owen Nolan*	12/23/2007 7:09:24 PM(UTC+0)	Sent	<u><i>The papers are for your Line of Credit at Northern Trust. The Bank sent them to me for the renewal of the LOC on friday and said they MUST be signed and returned by end of year. Its not just you. All of the guys have to do it. I don't make these rules. Where can I send them for next Wednesday or thursday fedex delivery??</i></u> PK
39	+14169970110 Owen Nolan*	12/23/2007 7:12:23	Sent	Can you also plz ask Diana for the ppwk I faxed a while ago for VortalOptics?? I need you to <u><i>sign</i></u>

		PM(UTC+0)		<i>and fax them to me at 480.314.3795. Then, we can have your shares registered. <u>Your ppwk is the last of the guys to get done.</u> Happy Holidays. I hope the kids are well!!</i>
--	--	-----------	--	---

From Nolan to Kenner –

45	+14169970110 Owen Nolan*	12/26/2007 5:26:24 AM(UTC+0)	Read	Westin bayshore vancouver we leave tommorrow
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From Kenner to Nolan –

42	+14169970110 Owen Nolan*	12/26/2007 1:34:06 PM(UTC+0)	Sent	It already was sent to Calgary. It will be there when you return. Please just sign and return asap. Happy Holidays!!
----	-----------------------------	------------------------------------	------	--

- As part of the government's Rule 16 production – they produced Kenner's FedEx records and AMEX account records. It confirmed Kenner sent Nolan the 2007 renewal docs via FEDEX on 12-26-07 – (**BNK-AMEX-1638**)

12/26/07	FEDEX# 831050944488 MEMPHIS TN	31.14
	NO REFERENCE INFO T3H027	
	TO: OWEN NOLAN CA	
	FROM: PHIL KENNER 85259	
	001 FEDEX ENVELO 1LB AWB831050944488	
	FedEx #1-800-622-1147	

From Nolan to Kenner –

46	+14169970110 Owen Nolan*	12/28/2007 6:04:48 PM(UTC+0)	Read	<i>Where's the package that needs signed plus jp needs 200000 for toronto settlement <u>where r we getting that money since everything is tied up</u></i>
47	+14169970110 Owen Nolan*	12/28/2007 6:06:04 PM(UTC+0)	Read	He said in order to write it off it needs to be paid this year
48	+14169970110 Owen Nolan*	12/28/2007 6:07:04 PM(UTC+0)	Read	<i>Call me need to discuss this</i>

- Kenner and Nolan spoke about the LOC paperwork on the phone at this point – per the following message the next day...

49	+14169970110 Owen Nolan*	12/29/2007 3:46:45 AM(UTC+0)	Read	<i>Can u call me <u>back</u> I have a question about <u>papers</u></i>
----	-----------------------------	------------------------------------	------	--

- As part of the government's Rule 16 production – they produced Kenner's FedEx

records and AMEX account records. It confirmed Nolan **returned his LOC documents** directly to Northern Trust Bank utilizing Kenner's FedEx account – **AFTER his CONVERSATION with Kenner -- (BNK-AMEX-1640).**

FedEx #1-800-622-1147		
12/31/07	FEDEX# 831050944477 MEMPHIS TN NO REFERENCE INFO85016 TO: NORTHERN TRUST US FROM: OWEN NOLAN 001 FEDEX ENVELO 1LB AWB831050944477 FedEx #1-800-622-1147	39.73
01/01/08	HMS HOST - SLC-AIRPOSALT LAKE CIT UT 8015752611	26.57

- Please note that Nolan text on December 28, 2007 acknowledged –
“where r we getting that money [for his agent’s bill] since everything is tied up”
- ***This is a clear confirmation that Nolan knew his \$2mm PLUS BOND account at Northern Trust was pledged for the LOC.***

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Chronic Traumatic Encephalopathy ("CTE"):

- ***"I wish I knew NOW – what I used to know then."***

Alternatively -- the government raised a second (2nd) possibility that existed with their witnesses' *faulty memory, confusion and mistakes*, which Kenner attacked as perjury &/or suborned perjury in Kenner's original Rule 33 submission.

Unfortunately, this incredible revisionary issue (now rising to the level of clinically diagnosed amnesia) was not raised until the Government's Rule 33 reply (See Document 440 @ 16,18), ***fully harming the defendant without the government's disclosure of exculpatory knowledge during trial.*** The "excuse", which was exhibited by each of the witnesses' contrarian statements during their direct-testimony, is **wholly consistent with the known symptoms of Chronic Traumatic Encephalopathy.**

The witnesses' memories were consistent with CTE and its symptoms.

Defendant Kenner has become aware, so far, of multiple litigations filed by former NHL players, including at least some of the alleged victims, for CTE. At the same time, the government supports the witnesses' 2015 trial statements, fully contradicting all of their own pre-trial empirical evidence, as *faulty memory, confusion and mistakes* with reference to a Supreme Court case (*United States v. Dunnigan*, 507 US 87, 94 [1993]), which is mis-referenced.

United States v. Dunnigan is an "*obstruction of justice enhancement*" issue overturned by the Supreme Court against the defendant, Dunnigan, for contradicting government witness hearsay during Dunnigan's trial testimony in her own defense testimony. The amnesia-like issues raised by defendant Kenner in *United States v. Kenner* (13-cr-607) are related to government's witnesses giving contradictory testimony ***to their own previous statements "of knowledge" (a.k.a. – amnesia) during:***

1. Lawsuits they filed in multiple jurisdictions,
2. Grand Jury testimony,
3. FBI proffer admissions,
4. Civil trial testimony,
5. Signed trial affidavits – and more.

– All “*under oath*”; and all with cross-corroboration of other similar investors, emails, texts, and affidavits (in Rule 16 evidence). Kenner's trial representations were 100% *in concert with* the government witnesses' prior statements and actions, and *only* in contradiction to the government witnesses' revisionary hearsay testimony during the 2015 trial -- years after the fact.¹⁴

Only post-trial – the government raised *faulty memory, confusion and mistakes* position with its witnesses who are now believed to be part and parcel to multiple litigation efforts based upon *amnesia-based* symptoms they began to suffer in the years *after* they gave their initial “*under oath*” statements.

Their collective previous statements were contradicted four to six (4-6) years later – **and ten (10) years after the actual occurrences** -- under the defense of the government's *faulty memory, confusion and mistakes* theory. The fundamental difference is that the contradicting statements are specifically related to monumental “material” issues of “concealment” from witnesses who routinely claimed *several hundreds' of times* on cross-examination that they “*could not remember*” the basic facts of their conviction from their own direct testimony; ***the basis for the conspiracy by concealment prosecution – solely based on people with CTE.***

¹⁴ Notwithstanding hundreds of cross-examination – “*I don't remember*” statements by the government witnesses -- on cross-examination of the government witnesses, and under pressure to respond, offered a synonymous theme; “*that happened years ago and is tough to remember*”. Tr.599 [Peca], Tr.753 [K.Peca], Tr.1541,1546,1600,1601 [Privitello], Tr.1837,1855,1862 [McKee], Tr.2188 [Nolan], Tr.2576, 2577 [Gaarn], Tr.2775 [Rucchin], Tr.2859 [Ranford], Tr.2986 [Manfredi], Tr.3541-42,3586 [Murray].

Although the government quotes *United States v. Cromartie*, “*As long as the jury is alerted to a witness' lies, the jury — the 'appropriate arbiter of the truth' — can sift falsehood from fact and make its own credibility determinations.*” – the underlying issue is that there is **new evidence** that the witnesses &/or the government withheld CTE related symptoms from the court, the defense, and the trier of fact – further emphasizing that the voluminous pre-trial statements that were contradicted “in unison” by every government witness – leads one to surmise that either perjury was suborned – or catastrophic mental damage has been suffered by each and every government witness (with sports related backgrounds) and the trial testimony was given thru a fog of CTE &/or amnesia-like symptoms – **making the “first-time-contradicting” statements wholly unreliable.**

- Please note that Tim Gaarn was a Division I college football player at the prestigious University of Maryland – and could be subjected to the same CTE issues as the former hockey players – as discovered thru Boston University Neurological Department studies – headed by Neurologist and Scientist, Ann McKee.

The best the government witnesses could confirm was that – “*they remembered what they were not told*” (as disheartening and confusing as that stand-alone statement appears) – while they could not remember a single detail of the actual meetings, places, times or details of any of the actual meetings that took place.

It is more amazing of an unjustifiable legal position that it is confounding.

The primary symptoms of CTE have been described by the neurological experts in those cases¹⁵ as:

1) CTE, a catastrophic disease first associated with boxers long ago, results when a toxic protein, Tau, accumulates in the brain, kills brain cells, and leads to symptoms such as cognitive dysfunction, memory loss, sleeplessness, depression, diminished impulse control, episodes of anger, and dementia, among others. Until recently, CTE could only be confirmed through an autopsy. Tau proteins are released whenever concussion occurs.

*2) CTE is found in athletes (and others) with a history of repetitive concussions. Conclusive studies have shown this condition to be prevalent in **retired professional hockey players** who have a history of head injury.*

*3) Clinical and neuropathological studies by some of the nation’s foremost experts have demonstrated that **multiple concussions sustained during an NHL player’s career can cause severe cognitive problems.***

*4) **This head trauma triggers progressive degeneration of brain tissue.** Degeneration of the brain can begin months, years, or even decades after the last concussion or the end of active athletic involvement, and has been diagnosed in many NHL hockey players. **The brain degeneration is associated with memory loss, confusion, impaired judgment, paranoia, impulse-control problems, aggression, depression, and eventually progressive dementia.***

5) In January 2010, the Boston University School of Medicine Center for the Study of Traumatic Encephalopathy (“BUSM”) and the Veterans Affairs Boston Healthcare System, in collaboration with the Sports Legacy Institute, neuropathologists confirmed for the first time that a former hockey player, New York Ranger Reggie Fleming, had been diagnosed with CTE.

6) Subsequently, Rick Martin, best known for being part of the Buffalo Sabres’ “French Connection”, was posthumously diagnosed with CTE. Martin was the first documented case of a hockey player not known to be a fighter or

¹⁵ United States District Court of MN -- CASE 0:14-md-02551-SRN-BRT

enforcer to have developed CTE. Martin is believed to have developed the disease from severe blows to his head while not wearing a helmet.

7) As described above, the NHL has known for decades that MTBI can and does lead to long-term brain injury, including, but not limited to, memory loss, dementia, depression, CTE, and related symptoms. The players continue to suffer on a daily basis from headaches, loss of train of thought, depression, anxiety, memory loss, confusion, aggression, paranoia, irritability, impulse control problems, inability to concentrate, light sensitivity, concentration difficulties, sleep disorder and cognitive deficit.

8) The 2011 report included the following findings that directly relate to how the symptoms and circumstances of concussions contribute to health risks:

(a) Several symptoms "were found to be significant predictors of time loss (headache, low energy or fatigue, amnesia, and abnormal neurologic examination). These findings are of use to physicians, medical support staff, players, coaches and management, given that they have prognostic utility for assessing concussion severity at the time of injury."

(b) "Time loss significantly increased for every subsequent (repeat) concussion sustained during the study period, as well as for each increase in the number of postconcussion symptoms experienced."¹⁶

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¹⁶ To that end, during the seven years, 1997-2004, during which the Concussion Program was underway, the NHL never told its players they might be at any increased risks for concussions. Nor did the NHL tell its players that their head injuries would expose them to the devastating sequel of post-concussion syndrome, CTE, or other neuro-cognitive impairments in later life.

That NHL's silence about the dangers of concussions, sub-concussive impacts and head trauma in the decades preceding the Concussion Program, and the NHL's continued silence about those dangers during the 1997-2011 Concussion Program induced Plaintiffs' reasonable belief that they were not at any particular risk for postretirement brain injuries and neurocognitive deficits.

The Hawai'i investors are not actually victims in the instant case -- because they have a net-profit in the Hawai'i Project.

- *Perhaps, the investigators were absent from training when the fundamental maxim was taught: a victim is one who suffers harm.*

Nonetheless, the Hawai'i LOC investors named as victims in the Superseding Indictment have a net profit in the Hawai'i project. The collectability of the Jowdy loans have been "out of Kenner's hands" since the people protecting Jowdy (specifically, FBI agent Galioto, Jowdy's employees -- John Kaiser and Bryan Berard, and Jowdy's attorney -- Tom Harvey [who worked hand-in-hand with AUSA Michiewicz throughout the trial in the Courtroom]) facilitated Kenner's arrest and detainment (with Kaiser and Berard also acting as the Confidential Informants ["CIs"] for the Kenner bail hearing's anonymous supporting statements of "*flight risk*" -- and deliberate falsifications of Jowdy's Baja Development Corp accounts actually belonging to Kenner -- *See the government bail hearing submission*).¹⁷

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¹⁷ See the NY Daily News Article: "*Former NHL player Bryan Berard and ex-cop [Kaiser] help feds nail two Arizona men in massive fraud*", **November 13, 2013**, 1:33pm -- which was released within an hour of the coordinated arrest of Kenner by Galioto and Jowdy's employees and cohorts.

As of the end of 2018, the following are minimum values for the Hawai'i LOC investors ROI (remaining unrealized gains):

➤ ***Individuals alleged as victims in the 2015 Superseding Indictment:***

<u>Hawai'i</u>	<u>Equity % of Little Isle 4</u>	<u>Hawai'i LOC Investment</u>	<u>Approximate Value</u>	<u>Bond interest earned</u>	<u>Testified recovery amount</u>	<u>Net current value of Little Isle 4 investment</u>
Nolan	17.65 ¹⁸	2,198,910	3,502,651	592,878	500,000	4,595,529
Peca	10.37	1,794,392	2,560,386	300,052	600,000	3,460,438
Berard	6.36	649,405	1,119,195	129,314	300,000	1,548,509
Sydor	7.85	856,200	1,436,051	249,215		1,685,266
Rucchin	6.82	1,010,645	1,514,413	210,113		1,724,526
Juneau ¹⁹	0	0	0	120,000		120,000 earned
Totals:		6,809,552	10,132,696	1,601,572	1,400,000	13,134,268

APPROXIMATE VALUE -- After the collection of the government *confirmed* Jowdy loan (assuming \$31 million at the time of collection) -- See Forf-44 presented during the government forfeiture hearings. Forfeiture Tr.66-67

BOND INTEREST EARNED -- Each Hawai'i LOC client received monthly-earned interest from their collateral accounts as a result of the pledge commitments for the investment.

TESTIFIED RECOVERY AMOUNT -- From Northern Trust Bank settlement – undocumented.

Bryan Berard is either a liar or suffering from severe CTE-related memory loss – based on Berard's 2015 trial claims that Northern Trust Bank called him to explain he lost close to \$1 million – considering the

¹⁸ Nolan increased his Little Isle 4 ownership from 13.44% to 17.65% after his 2007 buyout of Juneau's equity.

¹⁹ Juneau was completely bought out of his Hawai'i investment in 2007 by Owen Nolan at Juneau's request – without loss or consequence – only a \$120,000 profit during his Northern Trust account.

actual amount was \$350,000 LESS – thus Northern Trust never made that call.²⁰

²⁰ Berard's perjury in 2015 supported the Kenner-adverse, Government theories that Berard was *not aware* of his Hawai'i LOC seizure (Tr.3039-3040) when he proclaimed:

"Honestly, I was playing in Russia. I got back in 2009 and basically just kind of getting a phone call from Northern Trust that I lost close to a million dollars in my pledge account [which was actually less than \$650,000 at that time]."

- Thus – the amount Berard recently fabricated to the 2015 Court could not have been expressed thru a phone call from Northern Trust – since it was \$350,000 too much – **nor did the call ever happen.**
- Berard's prior March 2009 text communication with Kenner about the pending seizure also refutes Berard's perjured statements in 2015:

After reviewing the DEFAULT letter Kenner notified him about, Berard sent Kenner the following text – **five (5) full days before he authorized the seizure via a phone call with Northern Trust Bankers Brill and Mascarella:**

Berard text to Kenner:

620 7	+140152 46929 Bryan Berard*	3/26/2009 6:53:59 PM(UTC+ 0)	R e a d	When u get chance can we look at <u>how much money will b freed up after payn off line of credit NT??? Thanks</u>
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Kenner replied [in RED]:

728 0	+140152 46929 Bryan Berard*	3/26/2009 7:00:51 PM(UTC+0)	Sent	~300k
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Berard replied:

620 8	+140152 46929 Bryan Berard*	3/26/2009 7:04:18 PM(UTC+ 0)	R e a d	Cool thanks!!! When will that b freed Gonna use 200 for a cool oppurtunity will show u and talk 2 u abt it later. <u>Good for all of us n future.</u>
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Kenner replied:

728 2	+140152 46929 Bryan Berard*	3/26/2009 7:30:08 PM(UTC+0)	Sent	Can't wait to hear!
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- Berard's statement would have contradicted the timing of his own reformative claims to the FBI in 2013 (*after getting his job from Jowdy*), that "*at this time of*

This \$6,324,716 profit (*Net current value minus Hawai'i LOC investment [capital account]*) is for only the Hawai'i LOC investors who were named as alleged victims in the Hawai'i project.

The profit is exclusive of the Hawai'i LOC investors' full Hawai'i LOC collateral repayment, supra.

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collateral seizure when he returned from Russia", he found Kenner "not to be legit", yet his next investment with the residual funds was "Good for all of us n future". It clearly does not jive, since Berard (in Rule 16 evidence) requested Kenner review the follow-up investment for him.

- The FBI proffer by Berard was clearly a fabricated statement to aggravate the pending Galioto arrest, bolster his foundationless theories, and save Jowdy, Berard, Kaiser, Behnke (*and others*) from the pending December 2013 arrest warrants and legally ordered removal from DCSL by the Baja California Sur Mexico State Supreme Court after Kenner's scheduled, in-person testimony mid-December that ***had to be stopped at all costs - and fortuitously was.***

Berard was specifically aware of his \$649,405.93 Hawai'i LOC from the real default letter (*See KForfSupp-31*) and not the \$1 million he claimed he learned about (*fraudulently claimed unknowing and after the fact*) **via a phone call from Northern Trust, which never took place (Tr.3039-3040, 3041, 3042)**, and perpetuated by the government's leading questions.

Berard's 2015 false testimony also contradicted what he told the FBI on September 12, 2013 (*two [2] months prior to the Kenner arrest, clearly an aggravating factor*) as noted by Galioto: "At some point Berard received a FedEx letter from Northern Trust explaining that his bond account was liquidated to pay off his Hawai'i LOC." Second to the phone call that ***never occurred***, the alleged letter about the liquidation ***DOES NOT EXIST***; two (2) validated lies.

- Perhaps the ulterior motive of having the two (2) fraudulent conveyance of title cases by Kenner versus Kaiser and Berard dismissed and the various Mexico criminal efforts versus his boss, Ken Jowdy, dismissed in Mexico by helping FBI case agent Galioto indict Kenner occurred. Yet -- perhaps, *faulty memory, confusion and mistakes* was the excuse for the clear misrepresentations (*a.k.a. Perjury or CTE*) to the 2015 Court and 2013 FBI proffer, *both known and unchecked criminal acts by Berard.*

Hawai'i LOC investors NOT alleged as victims in the 2015 Superseding***Indictment:***

<u>Hawai'i</u>	<u>Equity %</u>	<u>Remaining LOC Investment</u>	<u>Approximate Value</u>	<u>Bond interest earned</u>	<u>Testified recovery amount</u>	<u>Net current value of Little Isle 4 investment</u>
<i>Norstrom</i>	7.74	1,200,000	1,771,725	218,943		1,990,668
<i>Murray</i>	7.87	1,242,769	1,824,097	243,470		2,067,567
<i>Gonchar</i>	6.36	899,221	1,246,237	144,339	500,000	1,890,576
Totals:		3,341,990	4,842,059	606,752	500,000	5,948,811

- The Hawai'i LOC investors who were not alleged victims have a net current value profit of **\$2,606,821** (*Net current value minus Hawai'i LOC investment*).
- The remainder of the non-Hawai'i-LOC investors in the Hawai'i project also have a tremendous "return on investment" ("ROI") based on their realized and unrealized gains as of 2018, of over \$1 million – ***after their initial 42.553% investment repayment in August 2006.***

Kenner's two (2) specific requests to the government in 2018 to assist in the collection of those unpaid debts from Jowdy were met with immediate rejection by the US Attorneys office – despite the fact that the government is fully aware thru their own admissions that Jowdy received and possesses 100% of the funds, and has at all times. *See KForfSupp-32.*

The government continues to act as-if "*in fear*" of Jowdy's powerful position -- defended by the former Director of the FBI, Louis Freeh and Jowdy's head of security, former Secret Service and FBI Agent, John Behnke. (*See Docket 554*)

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Baja Ventures 2006, LLC:

First – the government falsely alleged that funds were illegally diverted to Ken Jowdy in Mexico as part of a “loan scheme”, so Kenner could buy his equity in the Cabo san Lucas project (Diamante – CSL) (Tr.5722-23). Kenner has held his equity in Baja Ventures 2006, LLC (a Delaware LLC) since Baja Ventures 2006, LLC was created in 2006 for the sole purpose of holding the project equity for Kenner and his two (2) partners; Jere Lehtinen and Jozef Stumpel.

One hundred percent (100%) of the capital account funds are traceable to Stumpel and Lehtinen’s contributions – fully independent of any allegations in the instant case or nexus.

- **Kenner's Baja Ventures 2006 partners -- Stumpel and Lehtinen -- have not claimed themselves as victims under any definition. The capital account funds in Baja Ventures 2006 have no nexus to any elements alleged in the Kenner 2015 trial.²¹**

²¹ In fact – during Michiewicz’ summation – he abused his authorities to recap with certain liberties afforded in prosecution -- but not beyond the elements presented during trial as demanded under *United States v. Berger*, 295 U.S. 78 (1935). Michiewicz told the jury that “pure fraud” occurred when Kenner bought his equity in the Diamante Cabo san Lucas project with tainted funds -- without ever presenting evidence to support it throughout trial.

Post-trial – during the forfeiture phase – **the government's own evidence of Baja Ventures 2006, LLC being fully funded by Kenner's partners (Stumpel and Lehtinen)** were known at all times by evidence in the government's possession since it was originally represented during a 2009 arbitration case – and bank statements since 2005 – and the Diamante Cabo san Lucas operating agreement since 2006 (without challenge). Michiewicz fully prejudiced Kenner's rights as follows with wholly known -- misleading – and foundationless summation statements (Tr.5722-23):

*“And if you look at the Centrum loan, I can not think of a more perfect example of proof beyond a reasonable doubt – actions speak louder than words – no reason to mortgage Honu’apo parcel. **No reason other than for Kenner to get his 39 percent.** Because remember, this is happening at the same time as, you know, some of the other transactions we have already talked about. **To get his piece of the pie, that resort in Cabo.** No reason. Actions speak louder than words. And in this case the action is pure fraud.”*

Hawai'i Line of Credit capital account contributions (for Little Isle 4):

The funds that emanated from the Hawai'i corporations, which were part of the loans to Jowdy, were at all times:

1. Authorized by the Little Isle 4 operating agreement (*See KForf-Supp-33*), stating:

At the sole discretion of the Managing Member, Little Isle 4 may participate as a lender if deemed by the Managing Member to be in the best interest of the LLC.

The Managing Member, at their sole discretion, can engage in outside ventures deemed to be in the best interest of the LLC, including but not limited to other Private Equity funds and Lending opportunities.

2. Authorized by each of the Little Isle 4 members during pre-loan conference calls (or individually by Peca who joined the Hawai'i investment in the middle of the Jowdy loans in 2005 – as he confirmed to the 2011 SDNY Grand Jury in detail, *supra*),

Mike Peca confirmed this in 2015 to the EDNY (*Tr.423-424*):

*Q: Who told you that the money in you line of credit went to Ken Jowdy?
A [Michael Peca]: Phil Kenner did...It started out that we made a loan to Ken Jowdy.*

- *Peca did not invest into the Hawai'i Project until 2005 – thus **the remainder of the Little Isle 4 members had already approved the loan to Jowdy.** Peca's recollection accurately reflects -- "it started out", since Peca joined in the middle of the loan transaction (between 2004-2006).*
 - ***This is wholly consistent with his 2011 SDNY Grand Jury testimony that Peca could not recall in 2015, *supra*.***
3. Documented with a witnessed loan agreement between the lenders – *"Philip A. Kenner ("Kenner"), individual and **Little Isle 4, LLC**, a Delaware LLC, and any other related individual or entity involved in the future by Kenner to facilitate the ongoing Revolving Line of Credit..." and **Jowdy**, individual (as a borrower)", and*
 4. Confirmed by the government's forfeiture exhibit submission post-trial (*KForf-Supp-32*).

No illegal act could be deemed to have occurred. See *United States v. Ganji* 880 F.3d 760 (2018 – U.S. App. LEXIS 2279).

All of the authorizations were supported by a multitude of “**Jowdy loan**” independent confirmations “*under oath*” pre-trial; including but not limited to:

- 1) John Kaiser (2009 Arbitration testimony),
- 2) Bryan Berard (2009 Arbitration testimony),
- 3) Mattias Norstrom (2009 Arbitration affidavit),
- 4) Jozef Stumpel (2009 Arbitration affidavit),
- 5) Sergei Gonchar (2009 Arbitration affidavit),
- 6) Tommy Constantine (2009 arbitration testimony),
- 7) Kenner (2009 arbitration testimony),
- 8) Ken Jowdy (January 2010 California deposition),**
- 9) Sergei Gonchar (2010 FBI proffer),
- 10) Ken Jowdy (March 2010 FBI proffer – to Agent Galioto),**
- 11) 17 signed-off Plaintiffs²² (of Little Isle 4 members) v. Jowdy in the 2008-09 Arizona case,
- 12) 19 signed-off Plaintiffs²³ (of Little Isle 4 members) v. Jowdy in the 2009-10 California case,

²² 2008 Arizona plaintiffs versus Jowdy for the recovery of the “loans” included (5): **Michael Peca, Darryl Sydor, Bryan Berard, Steve Rucchin, Tyson Nash** -- as named in 2015 as victims in the Kenner Superseding Indictment.

- The Arizona lawsuit also included the following Hawai'i investors unnamed in the Indictment (12): Campbell, Khristich, Woolley, G. Murray, deVries, Lehtinen, Glatt, Norstrom, R. Murray, Gonchar, Stevenson, and Tsyplakov.
- A successful conclusion of the Arizona case would have benefitted even the Hawai'i investors who chose to support Jowdy after he paid them off with out-of-court settlements (*including Juneau, Moreau, Nolan – and others who were working in support of Jowdy once paid off by Jowdy and in direct opposition to the remainder of the investors Jowdy defrauded since 2002*).

²³ 2009 California plaintiffs versus Jowdy for the recovery of the “loans” included (5): **Bryan Berard, Steve Rucchin, Darryl Sydor, Tyson Nash, and Michael Peca** -- as named in 2015 as victims in the Kenner Superseding Indictment.

- The California lawsuit also included the following Hawai'i investors unnamed in the Indictment (14): Stumpel, Lehtinen, deVries, Woolley, Simon, Norstrom, Tsyplakov, R. Murray, Khristich, G. Murray, Gonchar, Campbell, and Stevenson.
- A successful conclusion of the 2009 California case would have benefitted even the Hawai'i investors who chose to support Jowdy after he paid them off with out-of-

- 13) John Kaiser (2010 FBI proffer),
- 14) Ken Jowdy attorneys' authentication of "loan agreement" during December 2010 Nevada civil trial (thru document witness and Jowdy employee, Robert Gaudet),
- 15) Kenner (2011 SEC testimony),
- 16) Michael Peca (2011 SDNY Grand Jury testimony),
- 17) Darryl Sydor (2011 SDNY Grand Jury testimony),
- 18) Turner Stevenson (2011 SDNY Grand Jury testimony),
- 19) Jozef Stumpel (2014 affidavit for Mexico litigation),
- 20) Rem Murray (2014 affidavit for Mexico litigation),
- 21) Mattias Norstrom (2014 affidavit for Mexico litigation), and
- 22) Jozef Stumpel (2017 affidavit for EDNY instant case).

Notwithstanding, the Hawai'i investors named in the 2015 Superseding Indictment whose capital account funds were loaned to Jowdy thru Little Isle 4's capital account, as part of the now **\$31 million plus** net loan due to the Little Isle 4 members ("lenders") with Hawai'i LOC contributions traceable from their capital accounts, the contributions totaled \$1,315,000 of the approximate \$5 million in principal:

- 1) Michael Peca (\$240,000 distributed to Jowdy thru Little Isle 4),
- 2) Darryl Sydor (\$200,000 distributed to Jowdy thru Little Isle 4),
- 3) Owen Nolan (\$425,000 distributed to Jowdy thru Little Isle 4),
- 4) Steve Rucchin (\$300,000 distributed to Jowdy thru Little Isle 4), and
- 5) Bryan Berard (\$150,000 distributed to Jowdy thru Little Isle 4).

Upon collection of the pending and government verified loan to Jowdy (*See KForf-Supp-32*), there is an absolute windfall awaiting the Little Isle 4 members. As the Court is aware -- two (2) letter requests/invitations from Kenner to the government in 2018 to assist in the collection of funds, which have been 100% of the time in Jowdy's control and for his sole benefit, have been **DENIED** (*See Docket 554*). Upon information and belief, the alleged government witness-victims are unaware that Jowdy possesses 100% of their Hawai'i loan funds as documented in *KForf-Supp-32*

court settlements (including Juneau, Moreau, Nolan – and others who were working in support of Jowdy once paid off by Jowdy and in direct opposition to the remainder of the investors Jowdy defrauded since 2002).

or the government's refusal to cooperate with Kenner in the recovery of the Jowdy-held funds.

Jowdy's own deposition testimony in January 2010 revealed – as such:

January 5, 2010 Jowdy deposition (@ 97): ALL LOANS CONFESSION

Q. But there was an expectation it would be repaid back, wasn't there?

*A: The deponent [Jowdy]: **Some of the money was -- could have been booked individually as loans and wouldn't have been possibly turned into equity at some time in the future.***

Q [By Mr. Richards]: But was it ever turned into equity?

*A [Jowdy]: **No***

Q. So sitting here today, do you think it's realistic that -- that these four entities [of Jowdy's] received close to 3.7 million dollars -- or over 3.7 million dollars, and that there's no --there's no obligation of repayment?

*A [Jowdy]: I want to be clear that you're looking at them in general, and I -- I can say that, in general, **I don't think any of it was converted into any equity anywhere.***

Jowdy's January 2010 testimony was furthered authenticated by his own February and March 2010 FBI proffers, including the same "loan" confirmations (See KForfSupp-34 @12,13,14,15,20) and corporate misappropriations to FBI Agent Galioto (@2,3,4,11,12). Yet, two (2) things occurred:

- 1) Jowdy's 2010 admissions to the FBI and the California civil court were systematically ignored by the FBI, SEC and "*washed under the rug*".
 - a. Jowdy's 2010 confessions confirmed his false claims in 2008-09 to the Arizona court as material perjuries, used as unscrupulous legal tactics to grossly delay the case thru "expedited discovery requests", and eventually dismiss the Arizona loan case against him -- and
- 2) Kenner's references to the Jowdy loans in 2015 were prejudiciously met with government hostility, as the government referred to Kenner's representations as "*bogus*" (Tr.5708 (2x), 5709), "*phony*" (Tr.4597, 4598) and "*supposed*" (Tr.5707-5708).

Yet – the government (*Forfeiture Tr.66-67*) – thru Jowdy and his attorneys’ production -- produced forfeiture exhibit *KForfSupp-32*, fully contradicting the government’s “most significant” trial allegations and slander of “*fake Jowdy loans*”, **leaving yet unaddressed transformative effects on the jury’s decision.**

Apparently, “*bogus*”, “*phony*”, and “*supposed*” were not actually true, despite the government’s successful-intended consequence of misrepresentations to the jury (and in addition to the planned pre-trial misrepresentations to the investors who the prosecution was counting on for newly-remembered testimony; utilizing *faulty memory, confusion and mistakes*).

The Jowdy loans have been at all times titled thru the 2004 loan agreement in the name of Little Isle 4 as a lender.

The government officially verified the Jowdy loan (at least post-trial, when jeopardizing their trial verdict was not an issue in front of the same court they previously deceived). **The current value of the loan exceeds \$31 million.** Again -- Kenner offered his assistance to the government thru multiple court submissions to recover the funds Jowdy received and stole (thru Jowdy’s own admissions). Yet – the government has represented no interest in recovering the loans, which were apparently known at all times by the investors, *supra*, (who are now suffering from full amnesia symptoms – known in the neurological community as CTE, *supra*). ***Nonetheless -- NO loss of value has ever occurred.*** The assets have merely faced insurmountable defiance and hurdles to collect (specifically with Kenner in detention). However, the Mandatory Victims Restitution Act (“MVRA”) statutes do not allow for a restitution judgment to provide a windfall of money by double collecting at any time in the future, especially for an asset that was “**never lost**” to Little Isle 4 and its investors.

Constantine Hawai'i consulting payments:

The government presented Chris Petrellese as an expert accounting witness during their case-in-chief. Petrellese explained to the Court during direct examination (Tr.3934):

Q: From December 2004 up until December 2005, how much money did the Constantine Management Group get from Little Isle 4 and Ula Makika"

A [Petrellese]: The net amount is \$1,000,900.

These funds were authorized under the Little Isle 4 operating agreement (See *KForfSupp-33 @ Article VI – Section V*). In fact, Kenner as the Managing Member of Little Isle 4 distributed consulting payments to multiple hard moneylenders as prepayment fees, while in search of additional acquisition and development funds, in concert with the efforts of Manfredi and Kaiser (proven at trial thru email evidence provided by Constantine's defense team)²⁴. These efforts commenced specifically after all of the conventional banks declined the early-phase development loan requests in 2004, including Bank of Hawai'i despite the significant introduction of Little Isle 4's attorneys at Carlsmith Ball LLP (the most well-respected real estate Law Firm in Hawai'i, managed by Steve Lim).

Other consultants who received hard money fees included:

- 1) Todd Burkhardt (\$105,000)
 - ***Advance fee paid by Kenner personally and sued on behalf of Little Isle 4 for non-performance,***
- 2) Peachtree Financial Partners (\$190,000)
 - ***Sued by Big Isle 5 for non-performance,***
- 3) Mt. Zion Commercial Services (*as part of Jowdy's loan*) (\$262,500)

²⁴ Even faced with the actual emails which documented that Manfredi communicated repeatedly with Constantine in relation to Constantine's consulting efforts to raise funds under his agreement with Little Isle 4 and "paid early" (See *Manfredi's FBI proffer confirmations 3500-CM-1-r @1*) – Manfredi still refuted recollection of the multiple years of his joint funding efforts "**led by Manfredi himself**" independently with Constantine. It defied logic – again. (Tr.3013-3015)

- ***Sued by Big Isle 5 for non-performance,***

- 4) Jim Sheppard and Rodney Dalton (*as part of Jowdy's loan*²⁵) (\$975,000)
- 5) Trina Rae²⁶ (\$150,000)
- 6) Florence Bennett Enterprises (\$80,000)
- 7) Lehman Capital Group (\$50,000)[*for the unsuccessful 2005 efforts – See KForfSupp-56*]
- 8) Louis Volpini (\$30,000)
- 9) Gronek and Latham (\$20,000)
- 10) Bridge Capital (USVI) (\$15,000)
- 11) Premier Mortgage Funding (\$15,000)
- 12) Khafe Mortgage (\$11,000)
- 13) Wynne & Associates (\$10,000)
- 14) Premier Financial Solutions (\$9,575)

²⁵ The government had in its possession the April 30, 2005 email from Kenner to Jowdy to confirm the outstanding loan amounts to date (*BATE STAMP – PK_SEC_17642-17643*). Jowdy turned over the email in his California case discovery (*KJ1345-KJ1346 – and was delivered by Kenner to the SEC in 2010*).

Kenner: “*Let me know what you think about these numbers. Tell me if you see any discrepancies. pk*”

Attached spreadsheet (*with no adverse Jowdy response*):

11/1/2004	Bruce Greenberg	\$	11,000
11/1/2004	Aero Lease of LB	\$	28,489
10/29/2004	Beja DevCo	\$	15,000
11/2/2004	Baja DevCo	\$	250,000
11/3/2004	Baja DevCo	\$	82,489
11/30/2004	Baja DevCo	\$	100,000
1/12/2005	Beja DevCo	\$	20,000
1/18/2005	Baja DevCo	\$	100,000
4/11/2005	Baja DevCo	\$	240,000
11/24/2004	Casa de Caza	\$	14,500
12/22/2004	Casa de Caza	\$	15,500
1/18/2005	Diamante	\$	250,000
2/1/2005	Diamante	\$	20,000
2/7/2005	Diamante	\$	300,000
3/28/2005	Diamante	\$	60,000
1/7/2005	StarTime Mgmt	\$	30,000
1/10/2005	StarTime Mgmt	\$	30,000
1/7/2005	Shepherd/Dalton	\$	750,000
1/8/2005	Shepherd/Dalton	\$	125,000
2/25/2005	Shepherd/Dalton	\$	100,000
3/14/2005	Diamante	\$	100,000
3/15/2005	Diamante	\$	75,000

²⁶ After significant introductions to the Hawai'i project, Rae began work on the Mexico funding (*See KForfSupp-35*) until Jowdy implored him to “stop” and rejoin only the efforts in Hawai'i – per Rae's 2011 email (*See KForfSupp-36*). Rae's consulting deal was similar to multiple other hard money connections who were pre-paid for the efforts. (*See KForfSupp-37*).

- 15) Maylan Stake (\$9,500)
- 16) Fisher Enterprises (\$3,500)
- 17) Centrum Financial (\$20,000) [successful Hawai'i loan in 2005].

Of the fifteen (15) or more hard moneylenders who received fees for the Hawai'i project, only Constantine and Centrum financial were successful in completing their pre-paid task; *delivering development fees to the Little Isle 4 project*. Several of the other hard moneylenders were sued by the Hawai'i entities for failing to deliver on their deals with Little Isle 4.

- 1) Big Isle V Ventures v. Mt. Zion Commercial Services²⁷ (Houston, Texas),
- 2) Big Isle V Ventures v. Peachtree Capital (Atlanta, GA), and
- 3) Kenner v. Todd Burkhardt²⁸ (Minneapolis, MN).

Kenner, Manfredi, Kaiser and the Hawai'i attorneys decided that the other lenders who breached their agreements were not worth the additional expenses to sue for non-performance &/or the belief that the collectability of a successful judgment would be too challenging after the additional litigation expenses versus the corporate entities.

On the other hand, the successful consulting agreement with Constantine – resulting in the Urban Expansion loan, was the key to securing the 2006 Lehman Brothers loan for \$105,000,000 one (1) year later -- and the Little Isle 4 investors being repaid approximately 42% of their invested capital one (1) month after they signed off the Joint Venture disclosure, written by Hawai'i attorneys, Bill Najam (Jowdy's brother-in-law) and Larry Markowitz. The Urban Expansion loan finalized the pending acquisition of the \$35,000,000 oceanfront parcel in Hawai'i (Waikapuna) in 2005. Without the ownership of the oceanfront parcel, Lehman Brothers had no interest in any lending to the Hawai'i partners solely with the other previously

²⁷ Sued on behalf of funds loaned to Jowdy – since the pre-paid funds originated from the Hawai'i accounts.

²⁸ Burkhardt filed personal bankruptcy in Minnesota to avoid the litigation.

acquired non-oceanfront parcels (despite their \$60,000,000 plus recorded values by KPMG).

The Hawai'i loan with Lehman Brothers closed in August 2006. By this time, Jowdy had received full access to the Diamante Cabo san Lucas funds for five (5) months (since March 2006) and looted over \$1,500,000 from the Cabo budgets (all documented in Jowdy's bank records in the government's possession (*See Kenner Docket submission – August 9, 2018 letter @ 4-5 -- outlining the mere beginnings of the Jowdy-Diamante Cabo san Lucas budget thefts in 2006 -- in response to Jowdy's Freeh Sporkin and Sullivan LLP submission (Docket 565) complaining of Jowdy "claims of fraud" by Kenner*).

From August 2006 thru 2009, the remaining Hawai'i project under the new Joint Venture ("JV") partner's control and corruption (and under Lehman Brothers' guidance and supervision) caused the real estate portion of the Hawai'i venture to fail in 2008-09 once Lehman Brothers filed for bankruptcy. This was after Windwalker (the JV partner) refused to pay the \$4 million of pre-negotiated "milestone" payments – a significant condition of the original Joint Venture negotiations.

The joint venture partner (Alan Worden, thru his management company – Scout Capital) had withdrawn roughly \$11,000,000 of budget funds during the first (1st) eighteen (18) months of the Hawai'i project (2006-2008) under his budgetary control (and over \$1,500,000 personally – approved by Masood Bhatti²⁹, Jowdy-style). Worden failed to move a single shovel of development dirt during that period of time; pre-bankruptcy – *in complete contradiction to the original funding budget approved by Lehman Brothers (and Bhatti) pre-JV in 2006*.

Na'alehu Ventures 2006 (the Hawai'i partners LLC – post-JV) Managing Member, John Kaiser, refused to lead litigation versus Lehman Brothers &/or Alan Worden

²⁹ Masood Bhatti was Lehman Brothers' commercial lending partner on the Hawai'i and Cabo deals. He was also Jowdy's lending partner on the Texas and Tennessee deals – where Jowdy offered Kenner the \$20,000,000 plus in bribes to "go along" with the Jowdy-Bhatti frauds. Alan Worden had been a 20+ year friend of Bhatti's since they attended grad-school together.

(Windwalker, LLC – a.k.a. Scout Capital) for their well-documented frauds and millions of Hawaiian embezzlements. Lehman Brothers' lender (Bhatti) and Alan Worden were all close friends of Ken Jowdy by 2006-07. Kaiser refused to follow thru on the pre-litigation efforts prepared by Kenner and a New York attorney in 2011, once Kaiser and Hawai'i/Mexico investor, Bryan Berard, received jobs from Jowdy in Mexico to "*look the other way*" (a well-documented Jowdy theme).

Nonetheless, there are no losses to account for in the Hawai'i project, simply ***an uncollected asset*** of \$31 million plus (and continuing to accrue interest) -- that almost every Hawai'i investor had verified as:

- 1) Decided "*by the group*", and
- 2) "*Known*" at all times as loaned to Jowdy, prior to the initial lending event in 2004.

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Eufora Private stock sales:

An independent valuation of Eufora was conducted in 2008-09 by a third (3rd) party during its extensive pre-lending investigation; Eufora lender -- Neptune Capital. As a result of Neptune's due diligence, Neptune loaned Eufora \$3,000,000 of operating capital at a \$20,000,000 valuation; at the time the Neptune deal was signed in February 2009.

The February 2009 Neptune loan signing conflicted with the planned and misleading questions by AUSA Komatireddy to Kristen Peca during trial – insinuating that the Neptune loan was in place – **and UNDISCLOSED** – in 2008 when her husband [Michael Peca] agreed to purchase Constantine's private Eufora shares on April 7, 2008 (9-10 months earlier). In fact – all of the Constantine private sales and several of the Gaarn private sales occurred before the Neptune loan and pledged asset agreements were signed. (*Tr.703*)

Q: Did he [Kenner] tell you at the time you invested those in Eufora whether those patents held were as collateral for a loan?

A [Kristen Peca]: If they were held as collateral? **No. No. Never.**

Q: Would that have been important to you in deciding to invest money?

A [Kristen Peca]: **Yeah, of course.**

Q: Why?

A [Kristen Peca]: They were being held as collateral that would show the company is in some sort of debt or owe money and is not doing as well and isn't ready to explode as they said it was.

Not only was this grossly misleading as Q&A by the government, but also virtually every major company on the planet worth over \$1 billion of market cap today has or has at some point in time carried significant debt, without exception.

The reality of the lending timeframe was ignored, as the Eufora patents were not pledged until the Neptune agreement was signed no earlier than January 2009. But – the proverbial damage was done as if based in truthfulness, beyond reproach.

The 2010 Eufora audit by Stolper and Giuliani's investigative group clears Kenner of any investor loss as a result of Kenner's actions.

Further verifying the Eufora intrinsic value in 2010 (after the Constantine and Gaarn private stock sales), Eufora Board Member, Tim Gaarn, hired a well-seasoned team of New York attorneys and investigators³⁰ to thoroughly audit Eufora and all of their corporate transactions to date. Following a three (3) month plus investigation of the Eufora records, NY Attorney Stolper and Rudy Giuliani's team requested a full disclosure letter to be signed-off by the AZ Eufora Partners I (all Eufora investors originally thru Kenner). Stolper and Giuliani's team negotiated to receive a Eufora stock "***contingency equity fee***" for their work-to-date and future work, in lieu of monetary billing to the group of Eufora investors. The agreed upon amount was six percent (6%) of the AZ Eufora Partners I (investors) equity at such time Stolper and Giuliani's team resolved the discovered issues at Eufora (none of which included Kenner).

Jay McKee confirms Giuliani contingency fee for investigations.

Eufora investor, Jay McKee³¹, confirmed the six percent (6%) contingency fee to Kenner after receiving direct communication from Attorney Stolper and Giuliani's team, as follows:

³⁰ The heavy-hitter team included NY Corporate attorney, Michael Stolper, **Rudy Giuliani**, Eric Hatzimos (Giuliani's crisis management corporate CEO), and former CIA agent, Oliver Libby. None of them had any prior connection to Kenner or Kenner investors.

³¹ Please note that McKee's July 15, 2010 text to Kenner is referencing the "*plan to take the lender [Neptune] out*". This is another major group "plan" – under the Giuliani efforts that Peca, Berard, Kaiser and Gaarn "*could not remember*" or "*flatly denied knowledge of it happening*" -- during their respective trial testimony 2015 *in synchronicity* (while coordinating the actual fund raising efforts – in evidence) – despite themselves being the "main investors" working daily with attorney Stolper coordinating the buy out of the loan from Neptune without Constantine's knowledge. Tr.1362-3, 1365 [Kaiser], Tr.2029-30 [Nash], Tr.3110-11, 3179-80 and R33 617 [Berard], Tr.2639-41 [Gaarn]

- Their prior knowledge and efforts are well-documented with almost 100 texts between Kenner, Gaarn, Peca, Berard and Kaiser during the 2010-11 investigations and civil actions (with a small sample included, *infra* – verifying CTE, synchronized and suborned perjury, or another fortuitous and circumstantial lucky instance of faulty memory, confusion and mistakes coinciding with the foundationless government theories):

Berard to Kenner re – himself and the investor group buying the Eufora loan:

14351	+14015246929 Bryan Berard*	7/4/2010 3:26:05 AM(UTC+0)	R e a d	U heard that he's [Constantine's] lawyer from LA called Michael [Stolper]? Michael said convo went well. <i>I'm sure if Brent [Neptune lender] knows all Hockey guys r against Tommy [Constantine] we shld. B able to buy loan and fuck Tommy.</i> Hopefully that's still an option
14367	+14015246929 Bryan Berard*	7/4/2010 10:14:27 PM(UTC+0)	R e a d	Let me know how it goes. <i>We whsl talk to micheal tomorrow nite and see if we can get releases shown up and get all the guys to sign them by thursday.</i> Then go from there. <u>Think if we do we can buy that loan from Brent real soon.</u> Then fuck tommy. Don't need to give him shit
14369	+14015246929 Bryan Berard*	7/4/2010 10:20:35 PM(UTC+0)	R e a d	<u>Yeah and lawyer [Stolper] already discussed that and guys have mentioned abt just buying the loan and fuckn Tommy.</u> So think easy decision

Bryan Berard to Kenner re – McKee buying the Eufora loan:

14800	+14015246929 Bryan Berard*	7/15/2010 1:31:11 PM(UTC+0)	R e a d	Call me now or at 1015am est. Michael [Stolper] wants to talk to me u and jonny [Kaiser]... <u>McKee says before he signs he wants to help pay off loan too</u>
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Mike Peca to Kenner re – himself buying the Eufora loan:

14727	+17163743234 Michael Peca*	7/14/2010 12:20:53 AM(UTC+0)	R e a d	<u>If not all willing members get a chance to be part of the loan buyout,</u> mean more % there may be a lynching. FYI
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Tim Gaarn to Kenner re – his third (3rd) party investors buying the Eufora loan:

13245	+12019708712 Tim Gaarn*	5/6/2010 2:41:02 AM(UTC+0)	R e a d	<u>Great progress today. Should hav \$2mm in attorney [Stolper] trust acct tomorrow. I'll call u in am.</u>
13699	+12019708712 Tim Gaarn*	6/5/2010 2:04:58 AM(UTC+0)	R e a d	<i>Oh yes ! But we r going to need \$300m then another \$300m in 45 days. Hopefully the 2nd 300 will b easy cause we r so far along.</i>

McKee text to Kenner to confirm "contingency fee" for Giuliani and his partners:

147 97	+1716803 4903 Jay McKee*	7/15/2010 12:03:01 PM(UTC+ 0)	R e a d	Hopefully you're getting some sleep right now; I am planning on sending the letter this morning.. Within our package or plan in <u>taking the lender out</u>, where is the 6% for Guilani partners comming from?
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- McKee and the remainder of the twenty-seven (27) Giuliani and Stolper clients received independent confirmation in 2010 that there was significant value in their Eufora stock.

Tim Gaarn has been the AZ Eufora Partners I Managing Member since 2005.

Tim Gaarn had been the Managing Member of the investors LLC, AZ Eufora Partners I since 2005, when he took the responsibility over from Kenner. In addition, Gaarn received Kenner's Eufora equity in 2005 as compensation for his new role from

1370 0	+120197087 12 Tim Gaarn*	6/5/2010 2:14:08 AM(UTC +0)	R e a d	<i>It goes out over 6-7 months.</i>
1370 1	+120197087 12 Tim Gaarn*	6/5/2010 2:22:32 AM(UTC +0)	R e a d	<i>Yes. Periodic payments over that time</i>

Berard to Kenner re – [same day as Gaarn confirm above of the pending buyout deal] with his personal concern that Constantine [him] will screw up the Eufora loan buyout like Jowdy has done to the Mexico negotiations (just prior to Berard receiving his job from Jowdy – once broke from lifestyle mismanagement and Jowdy's thefts):

1371 1	+14015246 929 Bryan Berard*	6/5/2010 9:43:24 PM(UTC+0)	R e a d	<i>I agree. I don't give a fuck abt him [Constantine]. <u>Just don't want him to fuck this up like Jowdy.</u></i>
1371 2	+14015246 929 Bryan Berard*	6/5/2010 9:50:13 PM(UTC+0)	R e a d	<i><u>All 5 of the [Eufora] board members in NYC.</u> <u>They all agree and know what's goin on?</u></i>

Could the synchronized "faulty memory, confusion and mistakes" be from CTE – or was it more reasonably just recently fabricated and coordinated testimony to misrepresent the 2010-11 intrinsic value of Eufora – supporting the falsified "pump-n-dump" stock claims insinuated by the government to the 2015 Court?

Kenner. After the 2005 transfer of equity, Kenner was only a lender to Eufora; no longer an equity investor. The Eufora tax records, multiple signed operating agreements, and internal Eufora emails all confirm these 2005 facts without inconsistency. Kenner documented loan to Eufora was paid-off during the 2006 tax year, as Eufora's tax records also confirmed.

Gaarn surreptitiously records Kenner for the FBI in 2012 for four (4) hours and bears no fruit of conspiratorial actions; nor does Gaarn imply it to trap Kenner.

In 2012, during four (4) hours of FBI recordings between Kenner and Gaarn – recorded at the request of the FBI; known as *Operation PederPuck* – none of it included Gaarn ever asking Kenner about “Kenner's stock” that the government tried to portray thru direct and misleading questions of Sydor (Tr.2173), Rucchin (Tr.2732), and others. Nor did Gaarn raise any conspiracy issues with Kenner as a “straw man” to defraud the investors on Gaarn's 2012 FBI recordings. This clearly would have been part of the FBI's entrapment plan to record Kenner if they thought Kenner would not immediately refute the events that ***never occurred***. The false and misleading “Kenner stock” claims were regurgitated in both AUSA Michiewicz' and AUSA Komatireddy's summations (Tr.5970-1, 5973) – further misleading the jury about the true, underlying evidence, again prejudicing Kenner.

During the lengthy recordings of Kenner -- Gaarn was solely concerned about the taxes he owed the IRS for selling “his stock”; simply asking Kenner for advice.

The government alleged in the Superseding Indictment that Gaarn was an unindicted co-conspirator – but when asked directly during trial – Gaarn denied having been part of any conspiratorial acts related to selling his stock in 2008-09 (Tr.2563-64).

Q: Let me ask you this. As you sit here today, sir, to your knowledge, and your belief, you have not committed any crime, isn't that true?

A [Gaarn]: True.

Q: In other words, you are not viewed in your mind of, lets say, conspiring with Phil Kenner to commit a crime, and by that I mean the two of you form an objective to commit a criminal act. There was never any meeting of the minds between you and Kenner for that purpose, true?

A [Gaarn]: Correct.

Q: As a matter of fact, sir, when you went to the FBI on two occasions to meet with the FBI, you didn't go with a lawyer, did you?

A [Gaarn]: No.

Q: And you didn't go with a lawyer because you knew in your own mind you had committed no criminal act, correct?

A [Gaarn]: Correct.

Gaarn was crystal clear that he was not part of any criminal act, conspiratorial or otherwise, with Kenner with regards to Gaarn's personal stock that he sold in 2008-09 thru his company, Standard Ventures, LLC (***raising tremendous prejudicial variance issues with the Superseding Indictment***). It was not Kenner's stock, nor did the government extract an admission from Gaarn (false or not) that it was Kenner's stock &/or Gaarn was merely acting as a "straw man" on the transactions.

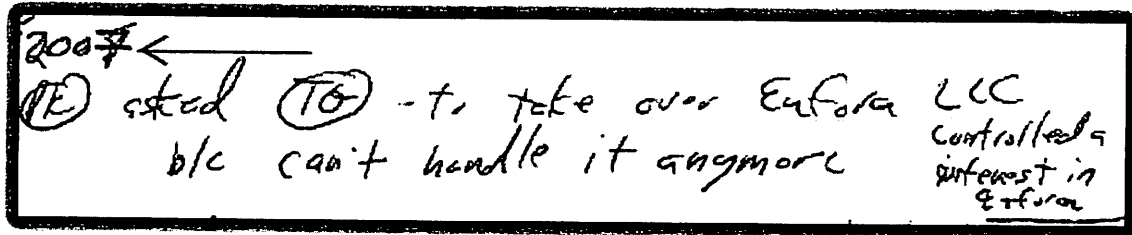
Although the government also claimed to the Court that Gaarn became "*the managing manager of Mr. Kenner's LLC that owns a substantial chunk of Eufora...*" (Tr.1021) – it was wholly untrue, again. ***No evidence was presented at trial to substantiate this misrepresentation.*** Gaarn confirmed it was Gaarn's company that owned the Eufora stock, not Kenner's, during his testimony (Tr.2570-71, 2578-79).

At all times since 2005, all Eufora records and underlying email communication confirm that Gaarn was the sole owner of the stock Kenner had previously acquired in Eufora. The Eufora tax records of 2004 (KForfSupp-38), 2005 (KForfSupp-39), 2006 (KForfSupp-40) and 2007 (KForfSupp-41) confirm the transfer of ownership from Kenner's LLC (GuideDog, LLC) to Gaarn's LLC (Standard Ventures) in 2005 – ***not 2007.***

***Gaarn FBI proffer notes were altered.*³²**

Ironically, the Gaarn FBI proffer notes were "**altered**" from Gaarn's 2012 proffer to allege he received the transfer of Eufora stock from Kenner in 2007 instead of 2005 for taking over the Managing Member role at AZ Eufora Partners I (See K29-15 @2) in order to "somehow" better fit the government theories of "*Kenner selling his stock*", perhaps closer to the date of Gaarn's sales in December 2008 and early 2009. All pre-trial empirical evidence, and every single Eufora record in the government's possession wholly refute the government theory. In fact, and in evidence pre-trial, every other Eufora email (between the Eufora board members – See KForfSupp-42³³) and subsequent operating agreements confirmed that Kenner was only a lender to Eufora after 2005³⁴, when Gaarn acquired Kenner's stock and took control as

³² 3500-TG-1-r



³³ KForfSupp-42 – Before the independent 2010 investigations of Constantine and Eufora began on behalf of the AZ Eufora Partners I investors – **hired by Gaarn** and without Kenner – the Eufora CEO (CR Gentry) emailed the Board of Eufora while verifying the investor's equity positions for the operating agreement that the Board was going to re-sign (in February 2009 – See KForfSupp-43 and KForfSupp-44 @35-37).

On August 14, 2009 -- Gentry told the Board—

"I created this [equity spreadsheet], after review of deposits from Mia [Eufora Secretary], discussions with Phil Kenner for transactions thru 2005, and Tim Gaarn for transactions after 2005."

"Phil is not a member of Eufora or AZ Eufora Partners I."

³⁴ The 2004 Eufora tax records (See KForfSupp-38 @ 11) confirm that Kenner had personally loaned **\$106,971** to Eufora.

The 2005 Eufora tax records (See KForfSupp-39 @ 10) confirm that Kenner had **increased** his personal loan amount to **\$386,971** for Eufora.

Managing Member of AZ Eufora Partners I (the previous Kenner investors' LLC – not Kenner's LLC). ***The government ignored all of their pre-trial evidence to frame their Eufora conspiracy theory.***

At no point in time has the government produced a valuation or appraisal for the Eufora patents that Constantine and Eufora secured from 2002 thru 2012. The intrinsic values of these patents are a significant value to the company (today), inasmuch they were the *most significant assets* of Eufora for the \$20,000,000 Neptune independent valuation in 2008-09 – and the Stolper and Giuliani-led “contingency fee request” investigations of 2010-11.

Since 2011, the end of Stolper and Giuliani's team's work, the only traceable activity that has affected the underlying value of Eufora has been the FBI investigation and communication by Galioto to the Eufora banking partners and other related parties.

Nothing that changed the intrinsic value of Eufora since that time has been in any way a reflection of anything related to Kenner or Kenner actions. Kenner's last role

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- *KForfSupp-39 @12* – the 2005 Eufora tax records confirm that Gaarn (Standard Ventures) had acquired Kenner's (GuideDog LLC) entire Eufora stock position -- now totaling 5.77%.
 - *KForfSupp-39 @21* – the 2005 Eufora tax records confirm that Kenner's (GuideDog LLC) equity had been reduced to 0% in 2005.
 - *KForfSupp-39 @35* – the 2005 Eufora tax records confirm that Gaarn's (Standard Ventures) equity position had been increased from .1% to 5.77% after the 2005 acquisition of Kenner's (GuideDog LLC) equity.
 - *KForfSupp-39 @35* – the 2005 Eufora tax records confirm that Gaarn's home mailing in Closter, New Jersey is present on Gaarn's Eufora tax return – *K1 document*.

The 2006 Eufora tax records (*See KForfSupp-40 @9*) confirm that Kenner had been fully repaid for his personal loan to Eufora during the 2006 tax year.

- It should be noted that Constantine repaid the repayment of the \$386,971 loan to Eufora from Kenner, personally. Upon information and belief – Constantine utilized his personal funds and directly sent them to Kenner for repayment when Kenner forgave the Eufora debt.

with respect to Eufora (not as a recorded shareholder or corporate officer) was to assist the full 2010-11 investigation of Stolper's team to expose any potential wrongdoings at Eufora, known at any time to Kenner.

Neither Giuliani nor Stolper represented Kenner.

To that specific end, Kenner personally recorded Constantine's monologue at Home Depot in August 2010 and immediately turned over the recording to Stolper and Giuliani for dissemination to their Eufora investors (Tr.4547-8). *Kenner concealed NOTHING.* The recording is chock-full of misrepresentations and threats by Constantine about facts that are foundationless and merely innuendo-based. Kenner was no more a represented party in the Stolper and Giuliani actions by Giuliani's team than was Constantine, so any representation of Kenner fraud was openly shared with Stolper, Giuliani and the investors and reviewed; immediately. In fact, Stolper's initial disclosure letter to the AZ Eufora Partners I investors includes full representations of the Constantine "Home Depot" rhetoric, dismissed at all times by Stolper and Giuliani's team with regards to Kenner. (See KForfSupp-45)

In August 2010, Constantine attempted to persuade the AZ Eufora Partners I investors to follow him and disregard all of the Giuliani-led investigative discoveries about the Eufora anomalies during a shareholders' meeting. Kenner listened to the conference call along with several of the investors and their attorneys. When Constantine alleged Kenner wrongdoings (during the conference call), Kenner highlighted the specific issue about the Gaarn Private Stock sales to attorney Stolper and Giuliani for the alleged victims – as follows via text during the conference call. Thus, no claims of ***concealment*** of the private stock sale transactions could be derived (with all of the shareholders on the call, as well). In a letter to Stolper just prior to the call, Constantine's California attorney had already threatened the same Gaarn sales issues – **making the private stock sales fully transparent to Stolper and Giuliani's clients.** (See KForfSupp-45 @ 4 & 7)

From Kenner to Stolper (during the Constantine-Eufora conference call):

18271	+14802354193 pk* +19176261175 Michael Stolper*	8/18/2010 8:09:12 PM(UTC+0)	Sent	Tommy has the Kenner gave Gaarn stock as an illegal transfer issue on the table. He's threatening with law enforcement to go after us
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Reply from Stolper (one minute later):

15750	+14802354193 pk* +19176261175 Michael Stolper*	8/18/2010 8:10:45 PM(UTC+0)	Read	Predictable
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Even before the Stolper reply (supra), Constantine made another unfounded allegation, which Kenner hi-lighted to the investor's attorney (Stolper):

18272	+14802354193 pk* +19176261175 Michael Stolper*	8/18/2010 8:10:37 PM(UTC+0)	Sent	He just threatened law enforcement involvement to settle the issue with the Kenner/Gaarn transfer!
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And Stolper again responded (two minutes later):

15751	+14802354193 Stolper* +19176261175 Michael Stolper*	8/18/2010 8:12:24 PM(UTC+0)	Read	Hopefully recorded.
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All potentially diminished value in the company (Eufora) occurred after FBI Agent Galioto intervened in the company affairs, long-after Stolper's litigation was halted by the 2011 Constantine bankruptcy filing in Arizona. The retention of the documented Eufora stock thru AZ Eufora Partners I cannot be part of a windfall judgment also recovered thru restitution. See *United States v. Boccagna* (2nd Cir. 2006).

Kenner's laptop and peripherals remain unrecovered.

Although Kenner's laptop and full documents were never recovered pre, during or after trial – despite the Court demanding the government produce Second (2nd) Circuit case law (*Tr.2141-2144*) to support their refusal to turn over Kenner's laptop, iPhone(s), and most likely extending to all peripheral devices – **Kenner has been denied access (commensurate with a myriad of other Kenner demands upon the Government pre and post trial – without recourse).**

- ***The Government ignored the Court demands.***

Nash's private stock purchase was independently confirmed by Nash, himself.

Nonetheless, Rule 16 evidence confirmed that Eufora investor Tyson Nash received stock directly from Constantine thru his alter-ego, Constantine Management Group (*See KForfSupp-46*), Nash produced the \$100,000 stock transfer certificate to the government, which is identical to the internal Eufora email traffic between Eufora Board Members (CEO Gentry and Gaarn) that confirmed the subsequent Gaarn transfers from his company – Standard Ventures (*See KForfSupp-47 [trial exhibit]*).

Glen Murray Eufora LLC	12/31/08	\$100,000	Bought .50% of Standard Ventures Stock in
Greg DeVries Eufora LLC	02/08/09	\$200,000	Bought 1.0% of Standard Ventures Stock in
Steve Ruchbin Eufora LLC	02/19/09	\$100,000	Bought .50% of Standard Ventures Stock in
Glen Murray Eufora LLC	03/19/09	\$100,000	Bought .50% of Standard Ventures Stock in
Steve Ruchbin Eufora LLC	04/17/09	\$50,000	Bought .25% of Standard Ventures Stock in
Glen Murray Eufora LLC	04/17/09	\$50,000	Bought .25% of Standard Ventures Stock in
William Ranford Eufora LLC ** PENDING INBOUND WIRE	05/04/08	\$100,000	Bought .50% of Standard Ventures Stock in

The government has also been in possession of the Board signed February 2009 Eufora operating agreement (*See KForfSupp-44 @35,37*) (confirming Gaarn was still a Eufora shareholder of significance, in agreement with the Eufora tax records – despite Gaarn's *faulty memory, confusion and mistakes* during trial [Tr.2628, 2667] – specifically after he previously claimed his non-conspiratorial role in the Eufora sales of “his own Standard Ventures” stock).

Norstrom's private stock purchase was independently confirmed by Norstrom, himself.

The government was also in possession of non-victim (from the Superseding Indictment), Mattias Norstrom's texts confirming he would transfer his \$100,000 funds directly to Constantine at his alter ego – Constantine Management Group on ***March 19, 2008:***

[Norstrom]: Got it! Account name: Constantine Management Group?

[Kenner]: Yes. That is where the 1% is being transferred from...

[Norstrom]: Sent the fax to Wells Fargo [Wells Fargo].

[Kenner]: I'll confirm Thx...

It should also be noted that non-victims from the Superseding Indictment were also part of Constantine's private sales as follows -- all listed in Kenner's 2011 Adverse Proceeding filing versus Constantine in Arizona (*See KForfSupp-48*). Similar adverse proceedings were filed by most of the Eufora investors versus Constantine as well, with Kenner's filing assistance) – and noted as:

Sergei Gonchar -- \$100,000 on 2-29-2008

Mattias Norstrom -- \$100,000 on 3-19-2008

Greg deVries -- \$75,000 on 6-2-2008

Glen Murray -- \$50,000 on 7-21-2008 – and

Vitali Yachmenev -- \$25,000 on 8-8-2008

Counting the signed notification produced by Nash and the non-victim status of the other Constantine private stock purchasers – ***only \$350,000 of the \$800,000 of stock were alleged as victim purchases in the first place.***

Ranford's private stock purchase was independently confirmed by Ranford, himself.

It should be noted that of the \$350,000, William Ranford confirmed the \$200,000 he paid Constantine in 2008 and the remaining \$200,000 he paid Gaarn in 2009 to the FBI during his 2012 FBI proffer (*See KForfSupp-49*). During his FBI proffer, Ranford was unmistakably aware of the multiple investments he made in Eufora, and the specific dates of the investments, totaling \$400,000 (from Constantine and Gaarn). Unfortunately – like the rest of the investors – Ranford suffered from CTE related symptoms in 2015 (3 years after his clairvoyant FBI proffer) related to his previously acknowledged purchases to the third (3rd) party FBI.

In addition to the Ranford 2012 admissions to the FBI – that he could no longer remember during his testimony in 2015 (*Tr.2824*), Gaarn sales totaling \$700,000 included \$350,000 from non-victims of the Superseding Indictment (Murray and deVries) – ***leaving only \$350,000 in question as victims***: Rucchin \$150,000 and Ranford \$200,000 (as noted by FBI agent Galioto during Ranford's 2012 FBI proffer). Independently in 2012, Ranford was able to confirm to the FBI that he made the multiple investments in Eufora (including the specific amounts and their corresponding months) – but three (3) years later, Ranford was ***adamant*** that he never made the additional investments, appearing wholly confused about the FBI proffer notes and his recollection. Ranford did confirm during cross-examination that he received the transfer confirmation statements from his investment account at his mailing address of record and did nothing to object to them when he received them in 2008 and again in 2009 (two [2] times). This further leaves one to question the source of the 2015 knowledge, thru either CTE or perjury – but certainly not based in any consistent belief system or concealment by Kenner.

As a result of the Superseding Indictment, ***only \$700,000 can be attributed*** to the alleged victims of the Eufora private stock sales in the Superseding Indictment (***notwithstanding \$400,000 of the remaining \$700,000 was confirmed by***

Ranford, himself, in 2012 to the FBI before his symptoms of *faulty memory, confusion and mistakes – and that of the other Eufora investors*).

- It is certainly noteworthy that each of those alleged Eufora victims was a participant in the 2010-11 Eufora litigation, led by their independent attorneys and investigators and **signed-off independently, *supra* (See KForfSupp-45).**

The Stolper and Giuliani signed full disclosures included the following investors who were named as alleged Eufora Private Stock purchase victims in the 2015 Superseding Indictment:

1. Darryl Sydor
2. Mike Peca
3. Steve Rucchin
4. Tyson Nash
5. William Ranford

In addition -- the Stolper and Giuliani clients who were not named in the Superseding Indictment as alleged Eufora Private Stock purchase victims -- included the following signed full disclosures:

1. Brian Campbell
2. Bryan Berard
3. Bryan Marchment
4. Dimitri Khristich
5. Glen Murray
6. Greg deVries
7. Jason Woolley
8. Jay McKee
9. Jere Lehtinen
10. Jozef Stumpel
11. Mattias Norstrom
12. Rem Murray
13. Turner Stevenson
14. Vitali Yachmenev
15. Vladimir Tsyplakov

It is hard to believe Kenner was in any position to conceal 2008-09 private stock sales from the investors or the well-seasoned investigation team – with all of the

empirical evidence that is in the government's possession and proves the opposite; full transparency by Kenner.

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Global Settlement Fund ("GSF"):

The purpose of the GSF, as formulated by Constantine and presented to Kenner and Kenner investors (and only Kenner investors³⁵) in the springtime 2009, was to eliminate "*all group issues*" with Ken Jowdy and the other investors who had chosen to side with Jowdy in spite of his discovered and exploited embezzlements (once Jowdy settled out of court with the Diamante Cabo equity he fortuitously stole from the Cabo project at the time of the March 2006 closing – with more misleading representations – *See KForfSupp-50*).

Constantine demanded an ACKNOWLEDGMENT disclosure from every contributor before he utilized their funds. The disclosure read:

"Per your conversation with Tommy, please acknowledge your approval and authorization for me [Kenner] to have wire transferred \$250,000 to Attorney Ronald Richards's Trust Account for your proportional contribution to the Global Settlement Fund. In addition to the fund paying for various legal fees, PR Agency fees, as well as other protective advances and settlement costs, you will be receiving transfer of membership agreements from Tommy for your acquisition of additional interest in Eufora, LLC, as well as your new LLC and operating agreements reflecting your ownership interests in Avalon Airpark Real Estate Project, the Falcon 10 aircraft, and the two Palms condominium units. You may not remember Tommy or I mentioning the Palms units in our conversation. In any case, because Moreau and Tommy settled that case as part of the Global Settlement, he has graciously elected to include you as a beneficiary in the significant equity that exists in those two units as part of this transaction. As we discussed, rather than throwing money away only on legal fees, this strategy which effectively acquires significant assets, while providing a legal remedy, is by far our best solution.

Tommy has requested from all of us and will provide to us, written documentation of every element of this transaction. Please respond ACKNOWLEDGED AND APPROVED to this email accordingly ASAP."

Each GSF contributor returned the disclosure – "ACKNOWLEDGED AND APPROVED". See KForfSupp-51.

³⁵ Constantine's GSF efforts had nothing to do with Nick Privitello, John Kaiser, or Ethel Kaiser.

GSF Acknowledgement and Approvals were received from the following contributors before their funds were used as authorized by Constantine:

1. Kristen Peca (See personal text confirmations of knowledge, *infra*)
2. Michael Peca (See personal text confirmations of knowledge, *infra*)
3. Jay McKee (See personal text confirmations of knowledge, *infra*)
4. William Ranford
5. Darryl Sydor
6. Brian Campbell – *not a victim in the 2015 Superseding Indictment*
7. Glen Murray – *not a victim in the 2015 Superseding Indictment*
8. Sergei Gonchar – *not a victim in the 2015 Superseding Indictment*
9. Jere Lehtinen – *not a victim in the 2015 Superseding Indictment*
10. Mattias Norstrom – *not a victim in the 2015 Superseding Indictment*

Jay McKee lies about GSF knowledge in 2015.

The government proffered to the Court that McKee was only involved in the GSF allegations during trial (*Tr.1846*). Despite McKee's inauthentic testimony in 2015 about concealed GSF plans (*See KForfSupp-52*), Jay McKee had a full dinner meeting with Constantine and Kenner in May 2009, then reiterated all of the elements of the GSF discussions via text message that evening, thus in real time, there is no way a trier of fact could believe that McKee had any element of the Constantine GSF plan concealed from him, despite his 2015 CTE-related testimony (*Tr.1821-1824*).

McKee's text conversation immediately following the 2-3 hour dinner the same night, which was confirmed as follows (McKee texts in BLACK – Kenner in RED):

7032	+171680349 03 Jay McKee*	5/9/2009 3:46:20 AM(UTC+0)	Read	Thx 4 making the trip bud.. Took in alot from the talk tnite.. Drive safe, be in touch..
8255	+171680349 03 Jay McKee*	5/9/2009 3:55:39 AM(UTC+0)	Sent	Good stuff
7039	+171680349 03	5/9/2009 12:36:25 PM(UTC+0)	Read	Can u do me a favor.. Can u email me, so I can look at it on paper, everything my

	Jay McKee*			250 turns into.. Nicole was speaking with Tommy when u explained to me all the areas where we are benefiting..
8265	+17168034903 Jay McKee*	5/9/2009 12:37:21 PM(UTC+0)	Sent	I will have tommy do it so it's consistent with the discussion

7040	+17168034903 Jay McKee*	5/9/2009 12:37:42 PM(UTC+0)	Read	Perfect, tks
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7043	+17168034903 Jay McKee*	5/9/2009 2:12:22 PM(UTC+0)	Read	Hey, also, could u email me what the 3 black sheep are getting in the end result, as well as Tommy bullet points they had 2 agree too.. Tks
8269	+17168034903 Jay McKee*	5/9/2009 2:32:11 PM(UTC+0)	Sent	Tommy said you will get 1/10th of everything that is acquired of theirs which includes 20% (2% for you) of the <u>airpark building</u> , 1/10th of their 3.64% of their Eufora shares (364% for you which puts you just over 1% in <u>Eufora</u>) and then a small piece of the <u>jet</u> which TC is still crunching numbers on but it will probably be 1% of it.
8270	+17168034903 Jay McKee*	5/9/2009 2:35:46 PM(UTC+0)	Sent	TC will send you the bullets they agreed to but has to wait till it's actually signed. Should be a day or two. They have only agreed by email so far. He will also send you the media summary but he wants you to convince the owner of Chef's to send him the tomato sauce Fed Ex.

7044	+17168034903 Jay McKee*	5/9/2009 2:43:44 PM(UTC+0)	Read	Haha.. Consider it done.. I'll have Lou put some bottles together with the extra meat for the real flavor..
8271	+17168034903 Jay McKee*	5/9/2009 2:45:55 PM(UTC+0)	Sent	Thx

7045	+17168034903 Jay McKee*	5/9/2009 3:36:47 PM(UTC+0)	Read	Did TC say the jet was worth 250m last night?
8273	+17168034903 Jay McKee*	5/9/2009 3:44:10 PM(UTC+0)	Sent	The jet is worth 1.5m. He invested 250k to repair it

7046	+17168034903 Jay McKee*	5/9/2009 3:45:53 PM(UTC+0)	Read	Aha.. Thats where the 250 number came from..
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7048	+17168034903 Jay McKee*	5/9/2009 3:53:08 PM(UTC+0)	Read	In the deal, the 3 guys get their money back from their involvement with TC, but nothing back from their Mexico deals, correct..
8276	+17168034903 Jay McKee*	5/9/2009 3:54:14 PM(UTC+0)	Sent	Correct!
7053	+17168034903 Jay McKee*	5/9/2009 5:43:22 PM(UTC+0)	Read	If we get control of Jowdys Cabo equity and move to sell Cabo - we get our 500 back from del mar, and what percent of Cabo do we end up with?
8282	+17168034903 Jay McKee*	5/9/2009 5:48:03 PM(UTC+0)	Sent	Its impossible to say until we know everyone who's involved in getting Jowdy's 40%. For example, the new bank/investor may want half of it to do the deal. But...whatever it is, you will get 1/10 of it.
7060	+17168034903 Jay McKee*	5/9/2009 10:01:18 PM(UTC+0)	Read	So is it correct to say we'd get our 500 back from del mar, as well as a prob minumium 2% of Cabo? Sorry to keep asking - just trying to get it right..

- In fact – following the text confirmations, McKee received another confirmation email from Constantine – further reiterating the various plans with McKee's GSF contribution -- before McKee returned his **"Acknowledgment and Approval"** email (chock-full of the same GSF detailed use of funds plans). See KForSupp-53.

Nothing was concealed from McKee – but full exhibition of his CTE symptoms were present during his complete 2015 amnesia-laden testimony about not being told any GSF details by Kenner &/or Constantine.

In addition (and further thwarting Kristen Peca and Michael Peca inauthentic claims of GSF concealment), McKee confirmed to the 2015 trial court that he spoke to a former teammate about the GSF before he decided to contribute to it. (Tr.1817). Only Michael Peca was his only former teammate involved in the GSF – further supporting Peca's full knowledge of the Constantine GSF plans in May 2009 –

especially since the defense was forced to re-present the empirical evidence of McKee's texts, emails and disclosure confirmations of transparency.

- In fact – following the McKee and Peca face-to-face meetings, Michael Peca received a similar confirmation email from Constantine (*See KForfSupp-54*) before both Michael Peca and Kristen Peca returned their ***"Acknowledgment and Approval"*** emails independently (chock-full of the same GSF detailed use of funds plans – *and no objections*). *See KForfSupp-51 (both Kristen Peca and Michael Peca acknowledgments)*.

Although Kristen Peca alleged in 2015 during her testimony that she wanted nothing to do with the "other items" Constantine described as part of Constantine's GSF plans (*Tr.717-718*), she emailed Constantine (May 18, 2009):

"Hey, before we sign off on "approved" letter, can we please have the written documentation as to exactly how much % we obtained with our contribution?"

- This is certainly not a disinterested party in the "other items" – just the contrary.

Michael Peca independently sent a separate text to Kenner to ask for the same "other items" documents *"for items they claimed in 2015 they wanted nothing to do with"*.

7	+1716374	5/9/2009	R	Make sure I get a statement of somekind to where my
0	3234	2:04:59	e	\$250k is going. <i>How much in ea of the <u>two companies</u>.</i>
4	Michael	PM(UTC+	a	Thanks
2	Peca*	0)	d	

Nothing was concealed from Michael Peca – but full exhibition of his CTE symptoms were present during his complete 2015 amnesia-laden testimony about not being told any GSF details.

- *Kristen Peca's falsehoods were not possibly derived from a concurrent recollection of the actual events, thus recently fabricated (whether suborned or in sync as recently fabricated with her husband, McKee and others).*

Part and parcel to Mike Peca's fabricated GSF testimony – he tried to explain to the 2015 Court the 2010 "pending" mediation settlement plans for a mediation that

occurred nine to ten (9-10) months after the actual meeting, *as a result of a series of lawsuits that had not even been filed yet. Tr.454.* His testimony was wholly incredible and never questioned by the government who knew it was all fabricated nonsense.

Peca cracked on cross-examination from his -- *Sargent Shultz* -- "*I know nothing*" routine, when he was forced to agree that in addition to all of the prior confirmations of the GSF planned use of funds by Constantine, another Constantine email (*Constantine trial exhibit – C-24*) addressing the "**Hawai'i loans to Jowdy**" were one (1) of the main reasons Peca contributed to the GSF efforts. *Tr.534-535 (read from the C-24 trial exhibit email).*

Q:...this will allow us to make good on all Jowdy Mexico related investments, any personal loans made to Jowdy, including Hawai'i, by any of you...Again, this is consistent with your reason for making the contribution. Is that right?

A [Michael Peca]: Yes.

After having his memory refreshed by the actual emails he received and commented on with Constantine, Peca agreed that the Hawai'i loans were consistent despite "*not remembering*" the loans during his direct testimony.

Michael Peca also confirmed for the trial court that he **expected** Kenner to be repaid his expenses (\$22,425) from the GSF funds – nonetheless, withheld by Constantine's control until two (2) months after the fact. *Tr.558.*

Q: So it was okay for you because they disclosed the fact that there may be expenses from the Global Settlement Fund to do just that?

A [Michael Peca]: Correct.

Faced with the email confirmations on cross-examination, Peca was forced to confirm that funds from GSF were **expected** to be used by Constantine to settle outside litigation – not just Jowdy the issues – like his wife fabricated (*Tr.560*):

A [Michael Peca]: We were just asking what the percentages were as, again, I stated the incentive of doing the global settlement, we were told that our money was going to be used to settle outside lawsuits in order to acquire those percentages.

Q: But it is saying here that you may be acquiring as a result of the Global Settlement Fund an interest in these entities. Is that correct?

A [Michael Peca]: Correct.

Lastly -- Peca confirmed that he could not remember any of the conference call emails from Constantine – but after review to refresh his recollection, he later confirmed he was part of them. Tr.596-597, 599. Michael Peca's "faulty memory, confusion and mistakes" were taking place about five (5) years after the emails and conference calls occurred – and ten (10) years after the "group decisions" to lend Jowdy Hawai'i funds (consistent with what Peca told the SDNY Grand Jury in 2011 – 4 years before his EDNY trial testimony in 2015).

How could Michael Peca, McKee or any of the others who confirmed their knowledge on cross-examinations be victims in the GSF of agreeing to exactly what they signed off for Constantine to do?

Nothing was concealed.

- **There are enormous insufficiency of the evidence hurdles the government cannot possibly excuse as *faulty memory, confusion and mistakes* to simply maintain their CTE-laced convictions.**

Constantine maintained full control of the GSF independently – and at all times.

Constantine maintained full control of the GSF at all times, confirmed at trial. (*Peca @ Tr.539*). Kenner never exhibited control of any of the funds. Constantine stipulated to his control of the expenditures in the GSF (*Tr.2691-2692*). Kenner had no control &/or knowledge of the ongoing transactions.

Constantine's attorney (LaRusso) informed the Court (*Tr.3772-3773*) that his client (Constantine) –

“...put in a stipulation that he’s [Constantine] authorized Mr. Richards to disperse all the monies listed in the [GSF] chart”.

Constantine and his counsel had no problems confirming the 100% Constantine control of the GSF and the funds Constantine controlled from Kenner and Kenner investors.

In fact, in 2012, after FBI agent Galioto, Berard and Kaiser had convinced McKee and Peca that Jowdy had not stolen or misappropriated any of their invested or loaned funds (in contradiction to all of the Jowdy banking record’s confirmations of a decade’s worth of embezzlements) – McKee and Peca chose to work with Jowdy and his attorneys (including Tom Harvey). Harvey assisted them in filing 2012 California Bar Complaints about their GSF funds versus their attorney. In the Ronald Richards’ response to the California Bar via their collective letter complaints (*See KForfSupp-55*), Attorney Ronald Richards acknowledged the following Constantine full-control on May 3, 2012 (only two [2] months before Peca recorded Kenner for the FBI):

“The complaints by Ms. Peca and by Messrs. Peca, McKee...represent an unfortunate attempt by them to use the State Bar complaint process as a vehicle to seek the return of funds that were properly transmitted to my former client, Tommy Constantine, on behalf of the Complainants.

It was apparent to me that each of the individuals involved in these transactions (including the Complainants, Constantine, Kenner) all understood that Constantine was handling the transaction for their mutual benefit.

In May 2009, each of the Complainants authorized Constantine, in his unbridled discretion, to further capitalize their various investments. These funds were to be used by Constantine for a variety of capital requirements.

At no time did the Complainants ever suggest, either orally or in writing, that the previously wired funds were for me to monitor or that they were to be used exclusively for the payment of legal fees.

I provided evidence to the Complainants that the funds were disbursed to various attorneys and entities at Constantine's direction. There is no factual dispute from anyone that Constantine received all the funds that were wired to him through my client trust account pursuant to the arrangement Constantine had made with the Complainants.

Michael Peca confirmed to the 2015 trial court that he always believed that Constantine – and only Constantine – was in charge of the GSF (Tr.539-540). Peca validated a second (2nd) time, as follows:

Q: Before the money went, before the money was spent, before you were apprised of that, what was your belief as to who was in charge of the Global Settlement Fund?

A [Michael Peca]: Initially Ronald Richards and, as it was ongoing, Tommy Constantine.

Q: And what was Phil Kenner's participation in that, as you recall?

A [Michael Peca]: He didn't seem to have one.

Peca further confirmed Constantine's singular control and management – when he told Peca he would not allow any more use of the funds for Mexico, clearly in contradiction to Kenner's specific focus (Tr.539):

A [Michael Peca]: ...but I do remember a conversation I had with Phil [Kenner] regarding litigation in Mexico and he said he couldn't do it because he didn't have the money and I remember calling Tommy [Constantine] to ask him why we couldn't use money from the global settlement for Phil [Kenner] and the answer was Mexico was too much of a crap shot and unpredictable legally.

So there's no money going towards the Mexican part of it.

Thus, it is wholly improbable that Kenner could have participated in any context with Constantine to *conceal* the use of funds &/or inappropriately disburse assets that Kenner never had a control over or construction of – especially if the GSF was “all about Jowdy”. *It is bewildering that Kenner could have had any control or involvement in a GSF conspiracy.*

Gonchar and Constantine “side-deal” destroys all government claims of Constantine misappropriation with over \$1,500,000 granted to Constantine from Gonchar (unrelated to the GSF) – in addition to de-linking their attempted venue claims.

Pursuant to an agreement Constantine made with former Kenner client, Sergei Gonchar (a non-victim in the Superseding Indictment), Constantine was granted access to the contribution Gonchar forwarded to Ronald Richards’ trust account for Constantine’s disbursement -- **personally**.

The following were contributed funds pursuant to the side-deal between Gonchar and Constantine. They had no bearing on the Constantine-led GSF plans.

5-5-2009	Gonchar deposit	\$250,000
5-5-2009	Gonchar deposit	\$749,985
5-5-2009	Gonchar deposit	\$362,355.58
5-5-2009	Gonchar deposit	<u>\$138,000</u>
	Total:	\$1,500,340.58

Gonchar gave 2015 trial testimony to support Constantine and their side-deal agreement during Constantine's defense case. **Gonchar testified that the entire amount of his \$1,500,340.58 contribution was available for Constantine's discretionary use;** not just the initial \$250,000 Gonchar wired on 5-5-2009 to the Ronald Richards account. In fact, there is no evidence from trial (or anywhere else) that Gonchar was receiving a proportional amount of additional equity in any GSF dealing as a result of the extra \$1,250,340.58 that he transferred for Constantine's

use. **It is a valid and unchallengeable conclusion that the second (2nd) and third (3rd) transfers by Gonchar to Constantine (9-9-2009 of \$749,985, 11-6-2009 of \$362,355.58, and 11-30-2009 of \$138,000) are not GSF related transactions; no different that the Privitello transfers in December 2009 for his Eufora stock purchases independently with Constantine. The Court ruling (*See Docket xxx*) related to the GSF expenditures by Constantine alleged Constantine spent \$27,xxx more that the Gonchar \$250,000 agreement allowed – yet there is over \$1,250,000 million left unaccounted for that Gonchar granted Constantine for his exclusive and personal use.**

Despite the grand disappointment of the “results” of the GSF efforts by Kenner and Kenner investors, the fact that Constantine disbursed the non-Gonchar funds under the strict representations that each and every contributor signed off for prior to Constantine's use of funds, there are not misappropriations or losses due to negligence. ***None was proven at trial. The government's case was solely supported without the acknowledgment of the Gonchar-Constantine deal.*** With the Gonchar approval, neither Kenner, the Kenner investors, nor the government have a proverbial leg to stand on about any potential misuse by Constantine for the remainder of the non-Gonchar funds; simply disappointment.

In fact, at all times, the documented capital contributions by Kenner to the GSF expenses, the Kenner equity contributions to the Falcon 10 aircraft, the two (2) Palms units, the Avalon Airpark loans, and the Eufora collateral Constantine owed Kenner for his “grocery list/shopping list” loans (*Tr.1404-05*), left Kenner the largest contributor and collective GSF efforts.³⁶ Kenner contributions exceed \$400,000 –

³⁶ A grossly fabricated claim that any of the “grocery list/sopping list” funds somehow belonged to Kaiser from previous and unrelated projects with Kenner in California are wholly refuted by Kenner and Kaiser's own banking records in the possession of the government years before the start of the 2015 trial. Thus – no plausible backstory – other than recently fabricated testimony (*Tr.1404-05*) – could amply justify the pre-planned ridiculous Q&As between Kaiser and the government during his direct testimony in 2015.

without counting the Eufora stock collateral -- as confirmed thru government possessed bank statements, credit card receipts and bank ledgers.

Kenner received expense reimbursement for GSF expenses paid for Constantine, Gonchar, Woolley, and others. Each of the expenses was required to be submitted to Constantine by Kenner for authorization (exclusively due to Constantine's 100% control of his GSF plan at all times). In fact -- Constantine denied over \$5,000 of expenses Kenner documented for Constantine himself (in Rule 16 evidence), as evidence of Constantine's sole control of the GSF and its funding.

No loss can be determined for money judgment or restitution for any contributor to the GSF thru Constantine, specifically considering Constantine followed the explicit "use of funds" sign-off that he requested and received from every GSF contributor.

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Conclusion

The Hawai'i investors are not actually victims -- because they have a net-profit in the Hawai'i Project.

In addition --

- Independently, each of the investors participated in various “group decisions” as testified to in front of the 2011 SDNY Grand Jury by three (3) of the Hawai'i partners; including Michael Peca and Darryl Sydor – who were bootstrapped with full CTE-related symptoms in 2015.
- Nineteen (19) Hawai'i and Mexico investors participated in a series of litigation versus Jowdy in 2008 and 2009 in Arizona, California and the country of Mexico to specifically recover loans that Jowdy received from the Hawai'i Project.
 - Not a single adverse document was produced at any time in Rule 16 evidence or in trial that would lead common sense to believe that any investor was not aware of their previous acknowledgements and approvals.

In the Global Settlement Fund -- Gonchar and Constantine's “side-deal” destroyed all government claims of Constantine's misappropriations -- with over \$1,500,000 personally granted to Constantine from Gonchar (unrelated to the GSF) – in addition to de-linking the government's attempted venue claims.

In addition --

- Between the McKee and Peca's CTE-related claims in 2015, there unmistakable direct communication with Kenner and Constantine via text and email confirmed they were fully aware of each and every planned use of the GSF by Constantine, *including their signed disclosures*. Every other GSF witness denied knowledge – in the same CTE-laden meandering on direct

examination by the government – but reversed and verified full email confirmations from 2009 (during cross examinations), confirming their true, underlying knowledge of all GSF aspects (at the real time of the events in question – not six [6] years later).

- Constantine's full, unabated control of the GSF from his first (1st) conception of the fund removes any believable claim that he and Kenner conspired to do anything related to the funds Constantine collected, administered and disseminated – in direct agreement with the fully signed "*acknowledgment and approval*" emails from each of the contributors.
- The government fully debunked their own, opening remark (*Tr.31*) theory that "somehow" Kenner and Constantine contrived the GSF to mislead the various investors that "*Jowdy had made off with their money*". The government produced *KForfSupp-32* after trial – which **confirmed** that Jowdy in fact "*made off with the investors money -- and had no plans to repay*" (now over ten [10] years after the thefts). This government misrepresentations also re-affirm that the prosecutorial team had to **IGNORE** Jowdy's own January 2010 2-day California deposition confessions and his follow-up March 2010 FBI proffer confessions (with his Deep State attorney – the former FBI Director Louis Freeh – sitting at his protective-side during the confessions which remain uncharged conduct today).
 - It clearly lays out the 2-tiered legal system available to those "*of privilege*" when "*acting above the law*".

The 2008-09 Eufora private stock sales –

- ***The 2010 Audit by Stolper and Giuliani's investigative group clears Kenner of any investor loss as a result of Kenner's actions.***
- Both independent verifications of value from the 2008-09 Neptune lending due diligence – and the 2009-2010 Giuliani-led investigation efforts (and

their 6% contingency fee request – in lieu of payments, *supra*) confirmed that **prior** to any interference by FBI agent Galioto (2010 and beyond), **the investors had no loss from their Eufora private stock purchases – related to any Kenner actions.**

- Rule 16 evidence confirms all of the private Eufora stock purchase shares were properly documented by the Eufora Board Members, and Tim Gaarn as the Managing Member of AZ Eufora Partners I (the investors' LLC); **neither of which Kenner had any responsibility for or involvement in – legal or otherwise.**
 - Kenner was not charged with Honest Service Fraud – thus the allegations that the investors did not receive full value for their purchases should fall on deaf ears.

LedBetter (a clear Red Herring, part and parcel to the 2006 Hawai'i Joint Venture closing requirements and negotiations)—

Kenner received no benefit from the 2006 loan that Kaiser and Berard confirmed in their 2013 Arizona case defense belonged at all times to John Kaiser (*Kenner v. Kaiser and Berard* – cv2013-052349 [Maricopa County Arizona]).

Notwithstanding -- it was based on an authorized activity in the Little Isle 4 By-Laws.

- To create any LedBetter theory – the government had to turn a *blind-eye* to a myriad of Kaiser and Berard criminal acts; including but not limited to:
 - Berard and Kaiser's forged and fabricated operating agreement to steal and sell the underlying Sag Harbor property.
 - Berard and Kaiser's defense in the Arizona lawsuit (LedBetter) claimed "*Kenner has no money in the deal*". This only further confirmed Kenner's

2015 testimony that the \$395,000 short-term loan was to Kaiser and for Kaiser's benefit in 2006 – not Kenner's (notwithstanding it was fully paid back in 11-days -- like a loan).

- Lastly -- in a 2014 FBI proffer (after Kenner's arrest and detainment), former NYFD, 9-11 first [1st] responder, Vincent Tesoriero, confirmed directly to FBI agent Galioto that Kenner was *"only getting construction funds for the Sag Harbor project"* – and Tesoriero received the LedBetter operating agreement directly from Kaiser despite Kaiser claiming at trial that he never possessed it.
- Tesoriero placed the proverbial dagger in Kaiser's trial lies by telling the FBI (in the 2014 proffer – pre-trial) that Kaiser had personally told Tesoriero that Kenner and Berard were coming into the new LedBetter deal – contradicting additional Kaiser trial lies.

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Ultimately – the government failed to prove there are any victim losses as a result of Kenner's actions. In fact, in contradiction to all of the solicited witness confirmations of the government's foundationless theories, each and every trial witness was impeached on the very evidence the government was and is still counting on the Court to ignore and sustain a bad verdict – and following their misdeeds by demanding forfeiture (for assets with no nexus – like Baja Ventures 2006), and money judgment for losses that are nonexistent.

Daniel Patrick Moynihan said – *“Everyone is entitled to their own opinions, even strong ones, but they are not entitled to their own facts.”*

As such – Kenner requests no forfeiture, money judgment &/or restitution are awarded in the instant case.

Dated: December 15, 2018

Sincerely,

/s/_____

Philip A. Kenner